

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID GRUVER,

Claimant,

vs.

LENNOX INDUSTRIES, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,Insurance Carrier,
Defendants.

File No. 20014345.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 2501; 2502;
2701; 2907; 5-9998

Defendants Lennox Industries, Inc., employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on April 14, 2022. Claimant David Gruver responds to the appeal. The case was heard on December 2, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 10, 2022.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish he sustained an injury to his cervical spine on September 3, 2020, which arose out of and in the course of his employment. The deputy commissioner found claimant failed to prove he sustained an injury to his bilateral shoulders as a result of the work injury. The deputy commissioner found claimant had not yet reached maximum medical improvement (MMI) as of the date of the arbitration hearing. The deputy commissioner found claimant is entitled to alternate medical care for his cervical spine injury, including, but not limited to additional treatment with Jonathan Geisinger, M.D, Ikigu Thuku, M.D., or other physicians at the McFarland Clinic. The deputy commissioner found defendants are responsible for all medical bills related to claimant's cervical spine injury only, including claimant's out-of-pocket costs. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of the independent medical examination (IME) conducted by John Kuhnlein, D.O. The deputy commissioner found that under rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants in the amount of \$3,794.00 for the cost of Dr. Kuhnlein's report, and \$103.00 for the cost of the filing fee.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is a credible witness. Defendants assert the deputy commissioner erred in finding claimant proved he sustained a work-related injury to his cervical spine, and in finding defendants are responsible for the cost of past and future medical care for claimant's cervical spine condition. Defendants assert the deputy commissioner erred in finding defendants should reimburse claimant for the cost of Dr. Kuhnlein's report and for the filing fee.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 14, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant proved he sustained a work-related injury to his cervical spine on September 3, 2020. I affirm the deputy commissioner's finding that claimant failed to prove he sustained a work-related injury to his bilateral shoulders. I affirm the deputy commissioner's finding claimant had not reached MMI as of the date of the arbitration hearing. I affirm the deputy commissioner's finding that claimant is entitled to alternate medical care for his cervical spine injury, including, but not limited to additional treatment with Dr. Geisinger, Dr. Thuku, or other physicians at the McFarland Clinic. I affirm the deputy commissioner's finding that defendants are responsible for all medical bills related to claimant's cervical spine injury only, including claimant's out-of-pocket costs. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of Dr. Kuhnlein's IME. I affirm the deputy commissioner's finding that under rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants in the amount of \$3,794.00 for the cost of Dr. Kuhnlein's report and \$103.00 for the cost of the filing fee.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be a credible witness. Defendants assert claimant was not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable

deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 14, 2022, is affirmed in its entirety.

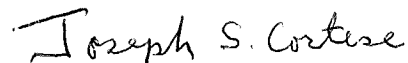
Claimant is entitled to alternate medical care. Defendants shall immediately authorize and timely pay for claimant's continuing medical care related to the compensable cervical spine injury with providers of claimant's choice, including, but not limited to Dr. Geisinger, Dr. Thuku, or other qualified medical providers at McFarland Clinic.

Defendants are responsible for all past and future medical expenses causally related to claimant's cervical spine injury, and defendants shall reimburse claimant for all causally connected out-of-pocket medical expenses.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant three thousand seven hundred ninety-four and 00/100 dollars (\$3,794.00) for the cost of Dr. Kuhnlein's report, and one hundred three and 00/100 dollars (\$103.00) for the cost of the filing fee, and defendants shall pay the cost of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 22nd day of August, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Ballard (via WCES)

Robert Gainer (via WCES)