

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANGELA HARPER,

Claimant,

vs.

LENSING, LTD d/b/a LENSING
FUNERAL HOME,

Employer,

and

UNITED FIRE & CASUALTY COMPANY,

Insurance Carrier,
Defendants.

FILED

FEB 9 2017

WORKERS' COMPENSATION

File No. 5048496

A P P E A L

D E C I S I O N

Head Note Nos: 1802, 1803, 2501
2907, 4000.2

Claimant Angela Harper appeals from an arbitration decision filed on September 18, 2015. Defendants Lensing, Ltd., d/b/a Lensing Funeral Home, employer, and its insurer, United Fire & Casualty Company, respond to the appeal. The case was heard on April 21, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 29, 2015.

The deputy commissioner found claimant failed to carry her burden of proof that the stipulated injury, which occurred on March 23, 2012, and which arose out of and in the course of claimant's employment with defendant-employer, resulted in permanent disability. The deputy commissioner found claimant is not entitled to any additional permanent disability benefits beyond what was voluntarily paid by defendants prior to the arbitration hearing. In addition to the temporary disability benefits voluntarily paid by defendants prior to the arbitration hearing, the deputy commissioner awarded claimant additional healing period benefits from September 9, 2013, through October 6, 2013. The deputy commissioner found claimant is not entitled to penalty benefits. The deputy commissioner found defendants are not liable for medical charges claimant incurred with John Banks, M.D., after June 28, 2012, or which claimant incurred with other medical providers claimant was referred to by Dr. Banks after June 28, 2012. The deputy commissioner found defendants are liable for medical charges claimant incurred with Robert Struthers, M.D., or which claimant incurred with other providers claimant was referred to by Dr. Struthers. The deputy commissioner ordered defendants to pay

claimant's costs of the arbitration proceeding, excluding the requested costs associated with reports from Mark Mittauer, M.D., because Dr. Mittauer's reports were excluded from the record as they were untimely served.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that the stipulated work injury resulted in permanent disability. Claimant asserts the deputy commissioner erred in failing to award claimant substantial industrial disability. Claimant asserts the deputy commissioner erred in failing to award penalty benefits. Claimant asserts the deputy commissioner erred in finding defendants are not liable for medical charges claimant incurred with John Banks, M.D., after June 28, 2012, or which claimant incurred with other medical providers claimant was referred to by Dr. Banks after June 28, 2012.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on September 18, 2015, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that the stipulated work injury of March 23, 2012, resulted in permanent disability and I affirm the deputy commissioner's finding that claimant is not entitled to any additional permanent disability benefits beyond what was voluntarily paid by defendants prior to the arbitration hearing.

I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits.

I affirm the deputy commissioner's finding that defendants are not liable for medical charges claimant incurred with John Banks, M.D., after June 28, 2012, or which claimant incurred with other medical providers claimant was referred to by Dr. Banks after June 28, 2012.

I find the deputy commissioner provided sufficient analysis of those issues in the arbitration decision and I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I reverse the deputy commissioner's award of additional healing period benefits from September 9, 2013, through October 6, 2013. I provide the following analysis with regard to this particular issue:

I agree with the deputy commissioner's finding that the causation opinions of Robert Jones, Ph.D., (Exhibit A5) and Robert Broghammer, M.D., (Ex. A7) that the work injury did not cause permanent disability, are entitled to greater weight than the causation opinions of those providers who determined the work injury of March 12, 2012, did cause claimant to sustain permanent disability. Consistent with this finding, I also find Dr. Broghammer's opinion that claimant's fall at home on September 9, 2013, was not caused by, and was not related to, the work injury, to be more convincing. In his report, Dr. Broghammer stated the following, in pertinent part:

2. Please address the causal connection of Ms. Harper's alleged falls (which she claims are related to her balance issues stemming from the MVA) to the worker injury. We are specifically interested in such opinions surrounding the September 2013 and the June 2014 reported falls.

In my medical opinion within a reasonable degree of medical certainty, the cause of Ms. Harper's alleged falls is idiopathic in nature (i.e., no particular explanation).

In my medical opinion within a reasonable degree of medical certainty, if such falls have occurred or are occurring, they are not related to the worker's motor vehicle accident. Ms. Harper's motor vehicle accident by police description, by responding emergency crew description, and by the initial attending emergency room physician was relatively minor in nature. As noted in the report of the responding officer's investigation, there was no airbag deployment in the vehicle that allegedly struck Ms. Harper's 2011 Toyota Sienna. As stated above, vehicle manufacturer's data indicate the airbags are designed to deploy with impact speeds between 8 and 14 miles per hour. This suggests that the accident that occurred was at a speed significantly less than the stated 45 miles per hour. In addition, the investigating officer's report was that there was approximately \$1,000 of damage to both Ms. Harper's vehicle and the Hyundai Santa Fe driven by the involved party. This is in contrast to Ms. Harper's verbal report to me today that her vehicle damage may have been \$10,000 and is also in contrast with the medical record of Dr. Jabbari when Ms. Harper indicated damage of approximately \$8,000. Furthermore, other than very mild tandem-walk difficulty and Dr. Banks continued documentation of the worker touching her upper lip rather than touch her nose on the finger-to-nose testing, there are no specific abnormalities found on any of the worker's examinations. Ms. Harper has been evaluated by neurology with minimal objective findings. She had been evaluated by otolaryngology with minimal objective findings. Her head CT and MRI of the brain have minimal objective findings. In essence, what we are left with are only the subjective complaints of Ms. Harper, which cannot be reproduced on physical examination and many of which have not been witnessed. Thus,

in my medical opinion with a reasonable degree of medical certainty, the worker's falls are more idiopathic in nature and not specifically causally connected to her alleged motor vehicle accident.

(Ex. A7, p. 20)

Based on Dr. Broghammer's analysis, I find claimant's fall at home on September 9, 2013, was not caused by, or related to, claimant's work injury of March 23, 2012, and I reverse the deputy commissioner's award of healing period benefits from September 10, 2013, to October 6, 2013.

I also reverse the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, 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.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 18, 2015, is MODIFIED as follows:

Claimant shall take nothing further in this matter in the way of temporary disability benefits or permanent disability benefits

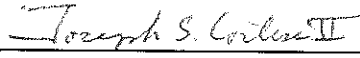
Defendants shall receive a credit for all benefits previously paid.

Defendants shall pay claimant's medical bills as detailed above and as detailed in the arbitration decision.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding and claimant shall pay the costs 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 this 9th day of February, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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