

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

MAR 16 2017

WORKERS' COMPENSATION

File No. 5048496

REHEARING

DECISION

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

Claimant filed a motion for rehearing (application). Defendants resist the application. The application is considered.

Claimant contends rehearing is required for two reasons.

First, claimant contends an industrial disability analysis is required by the agency as the parties stipulated claimant's injury resulted in a permanent disability. As a part of this argument, claimant contends the appeal decision was inconsistent in finding claimant failed to carry her burden of proof she sustained a permanent disability and claimant was not due permanent partial disability benefits beyond what was paid.

A review of the arbitration decision indicates factors of industrial disability were discussed in the arbitration decision. This included, but was not limited to, claimant's lack of functional impairment, diagnostic testing showing no abnormalities, claimant's return to work, and the reason for claimant's termination from her employer. The arbitration decision also detailed claimant's lack of credibility when comparing her testimony and her description of the accident to providers, to accident reports, emergency room records, vehicle photos and damage to vehicles. The arbitration decision accepted the stipulation of the parties that claimant had a permanent disability,

but also found claimant's industrial disability, or loss of earning capacity, did not exceed permanent partial disability benefits already paid. (Arbitration Decision, pages 10-12)

The appeal decision did affirm a finding claimant failed to carry her burden of proof the injury resulted in a permanent disability and claimant was not entitled to additional permanent partial disability benefits. Claimant is correct this affirmation is incongruent. For that reason, page two, first full paragraph five of the appeal decision is modified as follows:

"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."

Second, claimant contends the opinions of Robert Broghammer, M.D. and Robert Jones, Ph.D. should be excluded as they opine claimant has no permanent impairment and the parties stipulated claimant sustained a permanent disability.

There is no case law supporting claimant's contentions the opinions of Drs. Broghammer and Jones should be excluded.

An expert's opinion that claimant lacks functional impairment is not inconsistent with a stipulation of permanent disability.

Dr. Jones opined that after neuropsychological testing, claimant showed no evidence of brain damage. He noted prior diagnostic testing suggested no brain abnormality. Dr. Jones' report also reflects inconsistencies with claimant's report of the accident when compared to accident reports, emergency room records and photos of the vehicles. Based on these facts alone, the opinions of Dr. Jones are of value and should not be excluded.

Dr. Broghammer's report also noted inconsistencies with claimant's report of the accident. He noted the diagnosis of CTE, made by William Orrison, M.D., was not substantiated by medical literature. He noted diagnostic testing of claimant showed no abnormalities. He opined claimant had no physical restrictions. Based on these facts alone, the report of Dr. Broghammer has value and is not excluded.

For the reasons detailed above, claimant's application is denied as to this ground.

ORDER

THEREFORE, it is ordered that claimant's application is granted, in part, and denied, in part.

The appeal decision is supplemented as discussed above.

The appeal decision remains the same in all other respects.

Signed and filed this 15th day of March, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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