

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN PIERCE,

Claimant,

vs.

FANSTEEL/WELLMAN DYNAMICS,

Employer,

and

COMMERCE & INDUSTRY,

Insurance Carrier,
Defendants.

FILED

MAY 11 2017

WORKERS' COMPENSATION

File No. 5029067

A P P E A L

D E C I S I O N

Head Note Nos: 1108; 2905; 2907;
4000; 4000.2

Claimant Kevin Pierce appeals from a review-reopening decision filed on September 15, 2015. Defendants Fansteel/Wellman Dynamics, employer, and its insurer, Commerce & Industry, respond to the appeal. The case was heard on June 8, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 30, 2015.

The deputy commissioner found claimant is not entitled to review-reopening in this matter because claimant failed to carry his burden of proof that he sustained either an economic change of condition or a physical change of condition resulting in an increased loss of earning capacity following an arbitration decision which was filed in this matter on May 30, 2013, for an injury which occurred on September 23, 2005, which arose out of and in the course of claimant's employment with defendant-employer. In the May 30, 2013, arbitration decision, claimant was awarded 30 percent industrial disability, which entitled claimant to 150 weeks of permanent partial disability (PPD) benefits, commencing October 26, 2006. Based on the finding in the review-reopening decision of no economic change of condition and no physical change of condition, the deputy commissioner awarded claimant no additional PPD benefits. In the review-reopening decision, the deputy commissioner also found claimant failed to carry his burden of proof that a right knee injury which occurred on July 18, 2014, was a sequela injury of the September 23, 2005, injury and the deputy commissioner awarded claimant nothing for the July 18, 2014, injury. In the review-reopening decision, the deputy commissioner found claimant is entitled to penalty benefits for late payment of healing period benefits following a surgery on October 30, 2013, which was

necessitated by the September 23, 2005, injury. Specifically the penalty benefits awarded were for healing period owed for September 6, 2013, September 27, 2013, and October 10, 2013, in the amount of 50 percent of the total owed for those three days, and an additional \$500.00 for the late payment of healing period benefits following the October 30, 2013, surgery. The deputy commissioner found claimant is not entitled to penalty benefits for an alleged late investigation following claimant's July 18, 2014, right knee injury. The deputy commissioner found claimant is not entitled to reimbursement for the cost of the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on November 21, 2014. The deputy commissioner ordered the parties to pay their own costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained either an economic change of condition or a physical change of condition resulting in an increased loss of earning capacity following the arbitration decision filed in this matter on May 30, 2013. Claimant asserts the deputy commissioner erred in failing to award additional industrial disability benefits. Claimant asserts the deputy commissioner erred in finding claimant failed to carry his burden of proof that the right knee injury which occurred on July 18, 2014, was a sequela injury of the September 23, 2005, injury, and claimant asserts the deputy and the deputy commissioner erred in awarding claimant nothing for the July 18, 2014, injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to penalty benefits for the alleged late investigation following claimant's July 18, 2014, right knee injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement for the cost of Dr. Bansal's IME. Claimant also asserts the deputy commissioner erred in failing to order defendants to pay claimant's costs of the review-reopening proceeding.

Defendants assert on appeal that the review-reopening 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, 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 review-reopening decision filed on September 15, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the review-reopening 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 is not entitled to review-reopening in this matter

because claimant failed to carry his burden of proof that he sustained either an economic change of condition or a physical change of condition resulting in an increased loss of earning capacity following the arbitration decision filed in this matter on May 30, 2013. I affirm the deputy commissioner's finding that claimant is entitled to no additional industrial disability benefits. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that the right knee injury which occurred on July 18, 2014, was a sequela injury of the September 23, 2005, injury and I affirm the deputy commissioner's finding that claimant is entitled to nothing for the July 18, 2014, injury. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits for the alleged late investigation following claimant's right knee injury. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement for the cost of Dr. Bansal's IME. I also affirm the deputy commissioner's order that the parties pay their own costs of the review-reopening proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

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 review-reopening decision filed on September 15, 2015, is affirmed in its entirety.

Claimant failed to prove by a preponderance of the evidence that he sustained either an economic change of condition or a physical change of condition resulting in an increased loss of earning capacity following the arbitration decision filed in this matter on May 30, 2013.

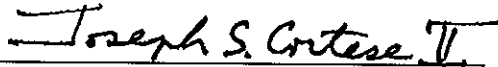
Claimant failed to prove his right knee injury which occurred on July 18, 2014, is a sequela injury of the September 23, 2005, work-related injury.

Defendants shall pay penalty benefits to claimant for the late payment of healing period benefits for September 6, 2013, September 27, 2013, and October 10, 2013, in the amount of fifty (50) percent of the total owed for those three (3) days as well as five hundred and 00/100 dollars (\$500.00) for the late payment of healing period benefits following claimant's October 30, 2013, surgery.

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.

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

Signed and filed this 11th day of May, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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