

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELLY BARRETT,

Claimant,

vs.

AMERISTAR CASINO COUNCIL
BLUFFS, INC.,

Employer,

and

HARTFORD ACCIDENT &
INDEMNITY INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

SEP - 1 2017

WORKERS' COMPENSATION

File No. 5046572

A P P E A L
D E C I S I O N

Head Note Nos: 1108.50; 1801; 1803;
2206; 2500; 5-9998

Claimant Kelly Barrett appeals from an arbitration decision filed on March 8, 2016. Defendants Ameristar Casino Council Bluffs, Inc., employer, and its insurer, Hartford Accident & Indemnity Insurance Co., respond to the appeal. The case was heard on December 14, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 11, 2016.

The deputy commissioner found claimant failed to carry her burden of proof that she sustained a permanent aggravation of her pre-existing low back condition as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on April 19, 2013. The deputy commissioner found the work injury caused only a temporary aggravation of claimant's pre-existing condition. The deputy commissioner found claimant is entitled to nothing in the way of permanent disability benefits. The deputy commissioner found claimant reached maximum medical improvement for the work injury on September 16, 2013. The deputy commissioner awarded claimant temporary total disability (TTD) benefits from April 19, 2013, through September 16, 2013. The deputy commissioner found claimant is entitled to payment or reimbursement by defendants for all charges for medical treatment related to claimant's condition incurred up to September 16, 2013, and the deputy commissioner found all such charges incurred after September 16, 2013, are claimant's responsibility. The deputy commissioner found claimant is not entitled to alternate medical care in the form of additional recommended treatment, including surgery, because that recommended treatment is necessitated by claimant's pre-existing condition and not by the work injury. The deputy commissioner ordered the parties to bear their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained any permanent disability as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to award industrial disability for the work injury. Claimant asserts the deputy commissioner erred in finding claimant reached MMI for the work injury on September 16, 2013, and in failing to award additional TTD benefits and temporary partial disability (TPD) benefits after September 16, 2013. Claimant asserts the deputy commissioner erred in failing to find claimant is entitled to payment or reimbursement by defendants of medical charges incurred after September 16, 2013. Claimant asserts the deputy commissioner erred in failing to award alternate medical care and in finding that the recommended treatment is necessitated by claimant's pre-existing condition and not by the work injury.

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, 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 March 8, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained a permanent aggravation of her pre-existing low back condition as a result of the work injury. I affirm the deputy commissioner's finding that the work injury caused only a temporary aggravation of claimant's pre-existing condition. I affirm the deputy commissioner's finding that claimant reached maximum medical improvement for the work injury on September 16, 2013. I affirm the deputy commissioner's finding that claimant is entitled to TTD benefits from April 19, 2013, through September 16, 2013. I affirm the deputy commissioner's finding that claimant is not entitled to additional TTD benefits or TPD benefits after September 16, 2013. I affirm the deputy commissioner's finding that claimant is entitled to payment or reimbursement by defendants for all charges for medical treatment related to claimant's condition incurred up to September 16, 2013, and all such charges incurred after September 16, 2013, are claimant's responsibility. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care because the recommended treatment is necessitated by claimant's pre-existing condition and not by the work injury. I affirm the deputy commissioner's order that the parties bear their own costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 8, 2016, is affirmed in its entirety.

Claimant sustained a work related injury arising out of and the in the course of her employment on April 19, 2013, which was a temporary aggravation of a pre-existing injury and condition and claimant's entitlement to temporary benefits ended when she reached maximum medical improvement as of September 16, 2013.

Defendants shall pay claimant temporary total disability benefits from April 19, 2013, to September 16, 2013, at a rate of three hundred one and 09/100 dollars (\$301.09).

Defendants shall receive credit for all benefits previously paid.

Pursuant to rule 876 IAC 4.33, the parties shall bear 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 1st day of September, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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