

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA WALTON,

Claimant,

vs.

COMPASS GROUP USA, INC.,

Employer,

and

NEW HAMPSHIRE INS. CO.,

Insurance Carrier,
Defendants.

File No. 1663689.02

RULING ON

MOTIONS FOR REHEARING OF

ARBITRATION DECISION

On January 11, 2022, defendants filed an application for reconsideration or rehearing of the underlying arbitration decision issued on December 22, 2021. On January 11, 2022, claimant filed a motion for rehearing as well.

The basis of the defendants' motion is that the facts do not support the findings and conclusions of law in the arbitration decision including whether claimant met her burden to prove a body as a whole injury, the appropriate commencement date for permanent partial disability benefits, entitlement to penalties and benefits, and award of medical expenses. Claimant seeks clarification of whether the IME report of Dr. Bansal was awarded separate from Iowa Code section 876 IAC 4.33 costs awarded.

The undersigned herein finds that a reconsideration of limited issues is appropriate.

First, in the penalty portion of the decision, it was found that claimant was entitled to penalty benefits of 30 percent for the late paid permanent partial disability benefits from May 6, 2019 to September 17, 2019. However in the order section this percentage was inaccurately identified as 50 percent. This is a Scrivener's error and should be rectified.

The order shall read as follows:

That defendants are to pay unto claimant penalty benefits in the amount of thirty (30) percent for the late paid benefits from May 6, 2019, to September 17, 2019, and fifteen (15) percent of the underpayment of benefits from March 31, 2021, until such time as the outstanding benefits owed are satisfied.

Second, claimant seeks a specific ruling as to whether Dr. Bansal's IME is reimbursable under Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low.

The triggering factor for an 85.39 examination is a low rating by a physician retained by the defendants. Dr. Bansal's examination was on December 23, 2019. (Claimants Exhibit 1) He charged \$570.00 for the examination and \$2,211.00 for the report. Dr. Hill, the authorized treating physician selected by defendants, issued a 7 percent impairment rating to the left lower extremity on September 4, 2019, triggering claimant's right to an Iowa Code section 85.39 examination.

The Iowa Supreme Court clarified that section 85.39 allows for reimbursement for the examination while the report can be reimbursed as a cost. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846-47 (Iowa 2015). Thus the entirety of Dr. Bansal's bill is ordered to be reimbursed with the examination authorized by Iowa Code section 85.39 and the report under 876 IAC 4.33.

Only two reports are recoverable under 876 IAC 4.33. Thus, taxable costs include the report of Dr. Bansal and the report of PA-C Collum, the first two itemized on claimant's exhibit 9, along with the filing fee and service of process fees. (CE 9:67)

Defendants request language clarifying the medical expenses awarded. The medical expenses related to the back, hip, and lower extremity which are causally connected are recoverable. Claimant seeks reimbursement for a visit on October 2, 2019, at which time claimant sought treatment for increased pain radiating from the left hip, swelling in the ankle and persistent pain in the left medial knee. (JE 2:27; 6:169) As a result of those complaints, claimant had an ultrasound. *Id.* However, on the same date, claimant also had a CT angiography of her chest. (JE 6:165-171) To the extent that the medical bills are unrelated to hip, low back, and left lower extremity, those medical bills are not awarded. Thus, the award for reimbursing claimant and/or payment directly to health care providers should not include the \$41.00 charge for the electrocardiogram report or the \$2,623.64 angiography. (CE 6)

The remainder of the issues raised by the defendants were previously considered and evaluated in the underlying decision.

THEREFORE IT IS ORDERED, the Arbitration Decision of December 22, 2021, shall be modified as follows:

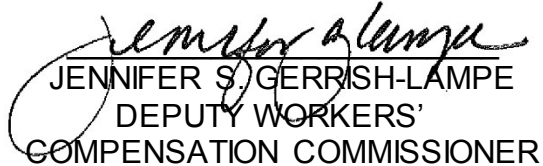
That defendants are to pay unto claimant penalty benefits in the amount of thirty (30) percent for the late paid benefits from May 6, 2019, to September 17, 2019, and fifteen (15) percent of the underpayment of benefits from March 31, 2021, until such time as the outstanding benefits owed are satisfied.

That defendants are to pay medical expenses as itemized in claimant's exhibit 6 less forty-one (\$41.00) for the electrocardiogram report and two thousand six hundred twenty-three and 64/100 dollars (\$2,623.64) for the angiography of October 2, 2019. The medical expenses shall be limited to the actual amounts owed or paid after allowable insurance or provider adjustments.

That defendants shall reimburse claimant for examination fee of Dr. Bansal.

That defendants shall reimburse claimant for costs including the filing fee, service of process fee, report fee of Dr. Bansal, and consult and report fee of PA-C Amber Collum.

Signed and filed this 25th day of January, 2022.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Nathan McConkey (via WCES)