

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICOLE FISHER,

Claimant,

vs.

ARCONIC, INC,

Employer,

and

INDEMNITY INSURANCE COMPANY OF:
NORTH AMERICA,Insurance Carrier,
Defendants.

File No. 1651146.01

A P P E A L

D E C I S I O N

: Head Notes: 1108.20; 1402.40; 1803;
: 1803.1 1808; 2204; 2502; 2907
: 5-9999

Claimant Nicole Fisher appeals from an arbitration decision filed on July 12, 2022. Defendants Arconic, Inc., employer, and its insurer, Indemnity Insurance Company of North America, respond to the appeal. The case was heard on November 17, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 7, 2022.

In the arbitration decision, the deputy commissioner found claimant failed to meet her burden of proof to establish she sustained a material aggravation of her pre-existing mental health condition as a sequela of the stipulated April 5, 2018, work injury to her bilateral wrists. The deputy commissioner found claimant sustained two percent functional impairment of the body as a result of the work injury, which entitles claimant to receive ten weeks of permanent partial disability benefits commencing on October 4, 2020. The deputy commissioner found that under Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the \$2,649.00 cost of the independent medical examination (IME) of claimant performed by Sunil Bansal, M.D. The deputy commissioner found that under rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants for the \$103.00 filing fee and for the \$2,076.00 cost of Dr. Bansal's IME report.

On appeal, claimant asserts the deputy commissioner improperly applied agency expertise in finding the impairment rating from Tobias Mann, M.D., the treating orthopedic surgeon, more persuasive than the impairment rating from Dr. Bansal, an

occupational medicine physician, who performed claimant's IME. Claimant asserts the deputy commissioner erred in finding claimant failed to prove she sustained a material aggravation of her pre-existing mental health condition as a sequela of the work injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendants for the cost of Dr. Bansal's IME under Iowa Code section 85.39.

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

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on July 12, 2022, is affirmed in its entirety with the following additional analysis.

Without further analysis, I affirm the deputy commissioner's finding that claimant failed to prove she sustained a material aggravation of her pre-existing mental health condition as a sequela of the work injury. I affirm the deputy commissioner's finding that claimant sustained two percent functional impairment of the body as a result of the work injury. I affirm the deputy commissioner's finding that under rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants for the \$103.00 filing fee and for the \$2,076.00 cost of Dr. Bansal's IME report.

With the following additional analysis, I affirm the deputy commissioner's finding that under Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of Dr. Bansal's IME.

Rule 876 Iowa Administrative Code 4.19(3)(f) requires the parties of record to submit a joint hearing report at the arbitration hearing which "defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing." The hearing report is to be signed by all counsel and it is entered as an order by the deputy commissioner following the hearing. In this case, the deputy commissioner found claimant did not raise the issue of whether she is entitled to recover the cost of Dr. Bansal's IME under Iowa Code section 85.39 on the hearing report, and the deputy commissioner found under 876 Iowa Administrative Code 4.33 claimant is entitled to reimbursement from defendants for the cost of Dr. Bansal's IME report.

Section 8 of the hearing report governing medical benefits provides a box for claimant to check if claimant seeks to recover the cost of an "[i]ndependent medical examination (IME) under Iowa Code section 85.39." In this case, on the hearing report, the parties checked the box to indicate that medical benefits were no longer in dispute.

Claimant did not check the box to indicate she was seeking to recover the cost of Dr. Bansal's IME under Iowa Code section 85.39.

Section 11 of the hearing report governs costs. The parties stipulated claimant's costs in this case have been paid. Claimant checked the box to indicate she wanted the deputy commissioner to address taxation of costs in the arbitration decision. Claimant did not expressly state on the hearing report that she was seeking to recover the cost of Dr. Bansal's IME under Iowa Code section 85.39.

At the start of the hearing the deputy commissioner listed the issues to be decided and noted, "[i]t looks like medical benefits are no longer in dispute. And then, lastly, claimant wishes for specific taxation of costs in the decision. Have I stated all the issues correctly, Mr. Boulton?" (Tr., pp. 4-5) Claimant's counsel responded "[y]es, you, have, Your Honor." (Tr., p. 5)

Following the hearing, the deputy commissioner entered the hearing report order adopting the parties' stipulations and the issues to be decided. Claimant did not raise the issue of whether she is entitled to recover the cost of Dr. Bansal's IME until she later filed her post-hearing brief.

This agency relies on hearing reports to determine the issues to be decided by the presiding deputy commissioners. I find claimant waived the issue of whether she is entitled to recover the cost of Dr. Bansal's IME under Iowa Code section 85.39 by signing the hearing report and by failing to raise the issue with the deputy commissioner during the hearing. See Bos v. Climate Eng'rs, 2016 WL 1178116, File No. 5044761 (Iowa Workers' Comp. Comm'n. March 22, 2016) (finding claimant waived issue by agreeing there was a dispute as to whether claimant was permanently and totally disabled on the hearing report and failing to raise the issue of defendants' response to request for admission regarding the issue until he filed his post-hearing brief) (citing to McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 186-87 (Iowa 1980) (concluding claimant's attorney failed to preserve error on foundation objection by failing to object when the deposition was offered into evidence before the deputy, and by failing to afford "his adversary [with the opportunity] to remedy the alleged defect"); Hawkeye Wood Shavings v. Parrish, No. 08-1708, 2009 WL 3337613, at *4 (Iowa Ct. App. 2009) (concluding the defendants waived the issue of whether they were entitled to a credit for benefits already paid for the September 2000 injury because on the hearing report signed by the defendants, the defendants stipulated "0 weeks" of credit); Burnnett v. Webster City Custom Meats, Inc., No. 05-1265, 2007 WL 254722, at *3-4 (Iowa Ct. App. Jan. 31, 2007) (concluding the deputy commissioner did not commit an abuse of discretion by refusing the claimant's request to change dates in the joint hearing report, and noting the agency's approach requiring claimants to list dates prior to hearing in a hearing report "is more than reasonable").

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 12, 2022, is affirmed in its entirety with my additional analysis.

Defendants shall pay claimant ten weeks of permanent partial disability benefits, commencing on October 4, 2020, at the stipulated weekly rate of six hundred thirty-five and 87/100 dollars (\$635.87).

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration in the amount of two thousand one hundred seventy-nine and 00/100 dollars (\$2,179.00), 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 on this 17th day of November, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Nathaniel Boulton (via WCES)

Jane Lorentzen (via WCES)