

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HAROLD RICHARDS, JR.,

Claimant,

vs.

MENARD'S DISTRIBUTION,

Employer,

and

PRAETORIAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

JUL - 6 2015

WORKERS' COMPENSATION

File No. 5041336

A P P E A L

D E C I S I O N

Head Note Nos. 1108; 1801; 3000

Defendants Menard's Distribution and Praetorian Insurance Company appeal from an arbitration decision filed July 17, 2014. The case was heard on October 23, 2013, and it was considered fully submitted before the deputy workers' compensation commissioner on January 13, 2014. The deputy commissioner determined that claimant proved a compensable injury and awarded claimant a running award of temporary total disability benefits. Defendants assert on appeal that the deputy commissioner erred in determining that claimant proved a compensable injury and in awarding running healing period benefits. Defendants also assert that the deputy commissioner erred in admitting an IME report from Michael McGuire, M.D., over defendants' objection because neither Dr. McGuire's involvement in this matter nor his report was timely disclosed to defendants prior to the hearing. Claimant asserts on appeal that the deputy commissioner's award should be upheld. Claimant also asserts that the admission of Dr. McGuire's report into evidence was proper.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of July 17, 2014, filed in this matter that relate to the issues properly raised on intra-agency appeal with the following additional analysis:

This agency has discretion to apply its administrative rules and to oversee the admissibility of evidence offered before it. Marovec v. PMX Industries, 693 N.W.2d 779 (Iowa 2005); Lull-Gumbusky v. Great Plains Communication, File Nos. 5011034 and 5031667 (Appeal December 2012) (affirmed by Iowa Court of Appeals February 11, 2015). Parties should not assume that late reports will be admitted into evidence. This

agency will review each situation on a case by case basis and exercise its discretion on whether late produced evidence should be admitted into evidence.

Ideally, cases are decided on the merits of the case, rather than on procedural grounds. The Iowa Supreme Court has emphasized this policy as well and has reversed this agency a few times for excluding expert reports. See Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595 (Iowa 1997); Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119 (Iowa 2003); Larson Mfg. Co., Inc. v. Thorson, 682 N.W.2d 448 (Iowa 2004).

In this instance, the deputy commissioner exercised his discretion in a manner that ensured the case was decided on the merits of the evidence while still reducing any prejudice to defendants caused by claimant's procedural delay. I perceive no abuse of discretion by the deputy commissioner in admitting exhibit 10 given his ruling granting defendants an opportunity for rebuttal. Therefore, I affirm the deputy commissioner's ruling admitting exhibit 10, Dr. McGuire's report.

Regardless, even if a court were to find the ruling admitting exhibit 10 to be erroneous, I conclude that the ruling would not be prejudicial to defendants. Ultimately, I concur with the deputy commissioner's findings pertaining to the causation issue.

I specifically find the opinion offered by claimant's personal physician, J. Greg Thomas, M.D., to be the most convincing medical opinion in this record. Dr. Thomas opined, "I do feel that his work activities at Menards, which included lifting 60 to 70 pound dog kennels and loading them from a trailer aggravated a preexisting degenerative disc condition." (Ex. 1H, p. 1) I accept Dr. Thomas' opinion and I find that claimant suffered an aggravation of his preexisting condition as a result of his work activities at Menards.

Claimant's surgeon, Eric Phillips, M.D. also appears to support the notion that claimant's condition was causally related to his work activities at Menards. As the deputy commissioner noted, Dr. Phillips is in a unique position to assess this issue, having performed a lumbar fusion surgery on claimant long before the alleged date of injury as well as the extension of claimant's lumbar fusion after this work injury.


The deputy properly weighed and considered the competing medical opinions and I concur with his analysis in this regard. Therefore, I concur with the deputy's findings that claimant proved a causal connection, or a material aggravation of his underlying condition, as a result of his work activities at Menard's on May 11, 2012.

THEREFORE, IT IS ORDERED:

The July 17, 2014 arbitration decision is affirmed.

All costs of this appeal are taxed against defendants.

Signed and filed this 6th day of July, 2015.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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