

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

JAN 23 2017

WORKERS' COMPENSATION

ELSA GONZALEZ,

Claimant,

vs.

BERRY PLASTICS CORPORATION,
d/b/a BERRY IOWA, LLC,

Employer,

and

FEDERAL INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5042719

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1800

Claimant Elsa Gonzalez appeals from an arbitration decision filed on August 19, 2015. Defendants Berry Plastics Corporation, d/b/a Berry Iowa, LLC, employer, and its insurer, Federal Insurance Company, respond to the appeal. The case was heard on March 12, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 1, 2015.

The deputy commissioner found claimant failed to carry her burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on November 2, 2011, resulted in anything more than a temporary minor right upper extremity scheduled member injury for which claimant was fully compensated prior to the arbitration hearing. The deputy commissioner found claimant failed to carry her burden of proof that the work injury extended beyond her right upper extremity to cause any additional physical injury or any mental injury. The deputy commissioner found claimant is not entitled to any additional temporary disability benefits. The deputy commissioner found claimant is not entitled to any permanent disability benefits. The deputy commissioner found claimant is not entitled to penalty benefits. The deputy commissioner found claimant is not entitled to payment of requested past medical expenses. Because defendants paid for an independent medical evaluation (IME) by Robin Sassman, M.D., the deputy commissioner found claimant is not entitled under Iowa Code section 85.39 to be reimbursed for a second

IME performed by Dan Rogers, Ph.D. The deputy commissioner also ordered claimant to pay the 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 the stipulated work injury resulted in anything more than a temporary minor right upper extremity scheduled member injury for which claimant was fully compensated prior to the arbitration hearing. Claimant asserts the deputy commissioner erred in finding claimant failed to carry her burden of proof that the work injury extended beyond her right upper extremity to cause any additional physical injury or any mental injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to any additional temporary disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to any permanent disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to penalty benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment of requested past medical expenses. Claimant asserts the deputy commissioner erred in finding claimant is not entitled under Iowa Code section 85.39 to be reimbursed for the second IME performed by Dan Rogers, Ph.D. Claimant also asserts the deputy commissioner erred in failing to order defendants to pay the costs of the arbitration proceeding and in ordering claimant to pay those costs.

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 August 19, 2015, 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 findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that the stipulated work injury which occurred on November 2, 2011, resulted in anything more than a temporary minor right upper extremity scheduled member injury for which claimant was fully compensated prior to the arbitration hearing. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that the work injury extended beyond her right upper extremity to cause any additional physical injury or any mental injury. I affirm the deputy commissioner's finding that claimant is not entitled to any additional temporary disability

benefits. I affirm the deputy commissioner's finding that claimant is not entitled to any permanent disability benefits. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits. I affirm the deputy commissioner's finding that claimant is not entitled to payment of requested past medical expenses. I affirm the deputy commissioner's finding that because defendants paid for the IME by Dr. Sassman, M.D., claimant is not entitled under Iowa Code section 85.39 to be reimbursed for the second IME performed by Dan Rogers, Ph.D. I also affirm the deputy commissioner's order that claimant pay the costs of the arbitration 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 arbitration decision filed on August 19, 2015, is affirmed in its entirety.


Claimant shall take nothing further in this matter.

Defendants shall receive credit for all benefits previously paid.

Pursuant to rule 876 IAC 4.33, claimant shall pay the 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 23rd day of January, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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