BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
APR 23 2019
WORKERS' COMPENSATION

MIA BARTELS, Claimant, vs. CITY OF CORALVILLE, Employer, and IMWCA, Insurance Carrier, Defendants.	File Nos. 5054758, 5054759, 5054760 APPEAL DECISION Head Note Nos: 1108; 1803; 5-9999

Claimant Mia Bartels appeals from an arbitration decision filed on June 12, 2018, in File No. 5054760. Defendants City of Coralville, employer, and IMWCA, insurer, cross-appeal in File Nos. 5054758 and 5054759. The case was heard on May 11, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 23, 2017.

In File No. 5054758, the deputy commissioner determined claimant sustained 35 percent industrial disability as a result of the stipulated left shoulder injury which arose out of and in the course of claimant's employment with defendant-employer on November 4, 2013. In so finding, the deputy commissioner adopted the lifting restrictions recommended by claimant's expert, Sunil Bansal, M.D. The deputy commissioner found Dr. Bansal's restrictions would prevent claimant from returning to her pre-injury position with defendant-employer.

Defendants assert on cross-appeal in File No. 5054758 that the deputy commissioner's award of 35 percent industrial disability is excessive.

Claimant asserts in File No. 5054758 that the deputy commissioner's award of 35 percent industrial disability should be affirmed.

In File No. 5054759, the deputy commissioner found claimant sustained permanent disability to her right shoulder as a result of a work-related injury which occurred on January 16, 2014. The deputy commissioner found Dr. Bansal's causation opinion to be most convincing. The deputy commissioner found claimant sustained an additional ten percent industrial disability as a result of her right shoulder injury.

Defendants assert on cross-appeal in File No. 5054759 that the deputy commissioner erred by finding claimant sustained permanent disability to her right shoulder.

Claimant asserts in File No. 5054759 that the deputy commissioner's award of ten percent industrial disability should be affirmed.

In File No. 5054760, alleged injury date of July 25, 2014, the deputy commissioner found there was not enough evidence to connect claimant's conditions or symptoms with her exposure to mold at work. As such, the deputy commissioner determined claimant failed to meet her burden to prove that her exposure to mold and/or mycotoxins at work was a substantial factor in causing any specific diagnosis or claimant's symptoms.

Claimant asserts on appeal in File No. 5054760 that the deputy commissioner erred in finding insufficient evidence to causally relate claimant's conditions or symptoms to her alleged exposures to mold and mycotoxins at work. Claimant asserts the deputy commissioner erred in failing to award claimant substantial industrial disability in File No. 5054760. Claimant asserts the deputy commissioner erred in failing to award claimant healing period benefits in File No. 5054760 from July 26, 2014, to June 21, 2015.

Defendants assert that the deputy commissioner's findings in File No. 5054760 should be affirmed.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. I will address each file number separately below.

In File No. 5054758, 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 in File No. 5054758 those portions of the proposed arbitration decision filed on June 12, 2018, which relate to the issues properly raised on intra-agency appeal with the following additional analysis:

Defendants argue on cross-appeal that the deputy commissioner's industrial disability award was too high in light of Mark Mysnyk, M.D.'s full-duty release. While defendants are correct that Dr. Mysnyk released claimant to work without restrictions on December 19, 2014, defendants failed to consider that this release was not necessarily intended to be permanent. In the notes from the December 19, 2014, appointment, Dr. Mysnyk noted twice that claimant had "not really 'tested it'" (meaning her left shoulder) because she had been off work. (Joint Exhibit 8, p. 528) Dr. Mysnyk indicated he wanted to see claimant after she had resumed normal activities to determine whether she had reached maximum medical improvement. (Jt. Ex. 8, p. 530)

In a letter to defendants on May 30, 2015, Dr. Mysnyk again noted his concerns about claimant being permanently released without restrictions:

> Although I had released her to try to work without restrictions, to my knowledge she has not been back to work, and therefore I do not know how she would do if she tried to work without restrictions. She reported that both her left shoulder and right elbow felt good at the time of her 12/19/14 exam, but as is noted in the clinic note "she thinks the biggest factor was that she has been off of work now for a while and has not been doing anything that stresses it." . . . My preference would be to wait until it can be demonstrated how she does when she is trying to use her upper extremities in a normal work fashion or have an FCE done.

(Jt. Ex. 8, p. 533)

When considered in this context, I agree with the deputy commissioner's finding that Dr. Mysnyk was not fully committed to permanently releasing claimant without any restrictions. Instead, the evidence indicates Dr. Mysnyk's full-duty release was intended to be a trial run to determine whether claimant was capable of permanently working without restrictions.

Notably, Dr. Mysnyk's prior full-duty release was not successful and resulted in another stint of work restrictions. (See Jt. Ex. 8, pp. 522-524) Thus, I find Dr. Bansal's recommendation for permanent restrictions to be more consistent with claimant's symptoms. I therefore affirm the deputy commissioner in this regard and I adopt Dr. Bansal's recommended restrictions.

I agree with the deputy commissioner that claimant's failure to look for work due to her alleged exposure-related symptoms makes an assessment of her earning capacity more difficult. However, the fact remains that Dr. Bansal's restrictions for claimant's left shoulder injury are significant, and defendants do not dispute those restrictions would prevent claimant from returning to her pre-injury position with defendant-employer. For those reasons, and with this additional analysis, I affirm the deputy commissioner's finding that claimant sustained 35 percent industrial disability due to her left shoulder injury in File No. 5054758.

In File No. 5054759, 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 in File No. 5054759 those portions of the proposed arbitration decision filed on June 12, 2018, which relate to the issues properly raised on intra-agency appeal with the following additional analysis:

Defendants assert on cross-appeal that claimant failed to prove she sustained any permanent disability to her right shoulder in light of her failure to mention right shoulder complaints until nearly a year after the injury allegedly occurred. While defendants are correct that claimant's right shoulder complaints do not appear in the record until well after the injury date, defendants have no expert opinion to buttress their

position. Claimant, on the other hand, offered the causation opinion of Dr. Bansal. Dr. Mysnyk did not offer a formal causation opinion, but I agree with the deputy commissioner that it is clear from the record that Dr. Mysnyk wanted to investigate claimant's right shoulder complaints and was obviously frustrated at his inability to do so. (See Jt. Ex. 8, pp. 527-534) Ultimately, in light of Dr. Bansal's opinion, claimant's position is better supported. With this additional analysis, I affirm the deputy commissioner's determination that claimant satisfied her burden to prove she sustained a permanent injury to her right shoulder on January 16, 2014.

I affirm the deputy commissioner's finding that claimant sustained an additional ten percent industrial disability due to her right shoulder injury in File No. 5054759.

In File No. 5054760, 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 in File No. 5054760 filed on June 12, 2018, which relate to the issues properly raised on intra-agency appeal with the following additional analysis:

I affirm the deputy commissioner's finding that it is impossible to tell what, if any, specific illness was caused by claimant's alleged exposures. I affirm the deputy commissioner's finding that claimant had a variety of chronic symptoms before she began working for defendant-employer. I affirm the deputy commissioner's finding that the opinions of Fredric Gerr, M.D., which were buttressed by the opinions of Patrick Hartley, M.B., B.Ch., B.A.O., M.P.H., were most compelling. I affirm the deputy commissioner's finding that there is not enough evidence to connect claimant's conditions or symptoms with her exposure to mold at work. As a result, I affirm the deputy commissioner's determination that claimant failed to meet her burden to prove that her exposure to mold and/or mycotoxins at work was a substantial factor in causing any specific diagnosis or any of claimant's symptoms. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in File No. 5054760.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues in all three claims.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 12, 2018, is affirmed in its entirety with my additional analysis as set forth above.

File No. 5054758 - Date of Injury: November 4, 2013:

Defendants shall pay claimant one hundred and seventy-five (175) weeks of permanent partial disability benefits at the weekly rate of five hundred thirty-three and 52/100 dollars ($533.52) commencing on June 20, 2014.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due

which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall be given credit for the permanency previously paid as set forth in Exhibit 22.

Defendants shall pay medical expenses in the amount of five hundred fifty-five and 84/100 dollars ($555.84) as set forth in Exhibit 32, pages 1361-1362.

File No. 5054759 - Date of Injury: January 16, 2014:

Defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits at the weekly rate of five hundred thirty-five and 34/100 dollars ($535.34) per week commencing on June 20, 2014.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall be given credit for the permanency previously paid as set forth in Exhibit 22.

Defendants shall pay medical expenses in the amount of eleven and 31/100 dollars ($11.31) as set forth in Exhibit 32, page 1366.

File No. 5054760 – Alleged Date of Injury: July 25, 2014

Claimant shall take nothing from these proceedings

For All Files:

Defendants shall reimburse claimant for the full cost of Dr. Bansal's IME as set forth in Exhibit 33, in the amount of three thousand seven hundred fifty and 00/100 dollars ($3,750.00).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two hundred sixteen and 80/100 dollars ($216.80), and the parties shall split 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 23rd day of April, 2019.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Matthew Milligan
Attorney at Law
6611 University Ave., Ste. 200
Des Moines, IA 50324
mmilligan@smalaw.net

Jane V. Lorentzen
Attorney at Law
2700 Grand Ave., Ste. 111
Des Moines, IA 50312-5215
jlorentzen@hhlawpc.com