

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ABBEY K. BOWMAN,

Claimant,

vs.

HY-VEE, INC.,

Employer,

and

EMC RISK SERVICES, LLC,

Insurance Carrier,  
Defendants.

File No. 5066083.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1703; 1802; 1803;  
1803.1; 2501; 2502; 2907;  
4000.2; 5-9998

Claimant Abbey K. Bowman appeals from an arbitration decision filed on November 9, 2020. Defendants Hy-Vee, Inc., employer, and its insurer, EMC Risk Services, LLC, respond to the appeal. The case was heard on July 31, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 31, 2020.

In the arbitration decision, the deputy commissioner found claimant failed to meet her burden of proof to establish her permanent disability resulting from the stipulated March 8, 2017, work injury extends beyond her right upper extremity into her cervical spine. The deputy commissioner found claimant sustained 12 percent permanent functional impairment of her right upper extremity, which entitles claimant to receive 30 weeks of permanent partial disability benefits. The deputy commissioner found the correct commencement date for permanent disability benefits is April 10, 2017. The deputy commissioner found defendants are entitled to a credit in the amount of \$9,803.12 against the permanent disability benefits awarded, and the interest owed thereon. The deputy commissioner found claimant is not entitled to receive temporary disability benefits from September 19, 2017, through October 17, 2017, and from August 29, 2019, through November 12, 2019, as alleged. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants. The deputy commissioner found claimant is not entitled to payment by defendants for the medical expenses and the medical mileage itemized in Exhibit 8 which relate to treatment of claimant's unrelated cervical spine condition. The deputy commissioner found claimant is entitled to reimbursement from defendants in the amount of \$215.96 for medical mileage for evaluations and treatment related to claimant's work-related right upper extremity injury. The deputy commissioner found that pursuant to Iowa Code section

85.39, claimant is entitled to reimbursement from defendants in the amount of \$2,200.00 for the cost of the independent medical evaluation (IME) of claimant performed by Farid Manshadi, M.D., on March 11, 2020. The deputy commissioner found that pursuant to 876 IAC 4.33 claimant is not entitled to reimbursement from defendants for the cost of a medical conference during which claimant's attorney met with Todd Johnston, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove her permanent disability resulting from the work injury extends beyond her right upper extremity into her cervical spine. Claimant asserts the deputy commissioner erred in failing to find claimant sustained substantial industrial disability as a result of the work injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive temporary disability benefits from September 19, 2017, through October 17, 2017, and from August 29, 2019, through November 12, 2019, as alleged. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits from defendants. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for the medical expenses and the medical mileage itemized in Exhibit 8 which relate to the treatment of claimant's cervical spine condition. Claimant asserts the deputy commissioner erred in finding that pursuant to 876 IAC, claimant is not entitled to reimbursement from defendants for the cost of a medical report from Dr. Johnston, which charge is actually for the medical conference during which claimant's attorney met with Dr. Johnston. (See, e.g., Exhibit 9, p. 60)

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.

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, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on November 9, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 prove her permanent disability resulting from the work injury extends beyond her right upper extremity into her cervical spine. I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant sustained 12 percent permanent functional impairment of her right upper extremity as a result of the work injury. I affirm

the deputy commissioner's finding that the correct commencement date for permanent disability benefits is April 10, 2017. I affirm the deputy commissioner's finding that defendants are entitled to a credit in the amount of \$9,803.12 against the permanent disability benefits awarded, and the interest owed thereon. I affirm the deputy commissioner's finding that claimant is not entitled to receive temporary disability benefits from September 19, 2017, through October 17, 2017, and from August 29, 2019, through November 12, 2019, as alleged. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for the medical expenses and the medical mileage itemized in Exhibit 8 which relate to treatment of claimant's unrelated cervical spine condition. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants in the amount of \$215.96 for medical mileage for evaluations and treatment related to the work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of Dr. Manshadi's IME. I affirm the deputy commissioner's finding that pursuant to 876 IAC 4.33 claimant is not entitled to reimbursement from defendants for the cost of the medical conference during which claimant's attorney met with Dr. Johnston. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 9, 2020, is affirmed in its entirety.

Defendants shall pay claimant thirty (30) weeks of permanent partial disability benefits commencing on April 10, 2017, at the stipulated weekly rate of four hundred thirty-two and 19/100 dollars (\$432.19) per week.

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 receive credit in the amount of nine thousand eight hundred three and 12/100 dollars (\$9,803.12) against the permanent disability benefits awarded, and the interest owed thereon.

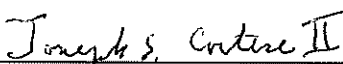
Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of two thousand two hundred and 00/100 dollars (\$2,200.00) for the cost of Dr. Manshadi's IME.

Pursuant to both Iowa Code section 85.27 and section 85.39, defendants shall reimburse claimant in the amount of two hundred fifteen and 96/100 dollars (\$215.96) for medical mileage for evaluations and treatment related to claimant's work-related right upper extremity injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, 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 25<sup>th</sup> day of February, 2021.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Benjamin Roth (via WCES)

Lindsey Mills (via WCES)