

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HAMIDA ODOBASIC,

Claimant,

vs.

KINSETH HOTEL CORP., d/b/a
HOLIDAY INN,

Employer,

and

EMC INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

AUG 25 2015

WORKERS' COMPENSATION

File No. 5011318

A P P E A L

D E C I S I O N

Head Note Nos. 2905, 1804, 2701

Defendants Kinseth Hotel Corp, d/b/a Holiday Inn, and EMC Insurance Company appeal from a review-reopening decision filed on July 25, 2014. Responding to the appeal is claimant Hamida Odobasic.

STATEMENT OF THE CASE

According to an agreement for settlement between the parties which was approved by this agency on September 25, 2007, claimant suffered a work injury to her low back on March 4, 2003, resulting in a 75 percent permanent loss of earning capacity. (Exhibit 30) Claimant subsequently was fully paid her entitlement to permanent partial disability under the agreement for settlement. Claimant then returned to work for the defendant-employer. Claimant asserts that after 2007, her physical condition worsened and she filed a review-reopening petition seeking additional disability and medical benefits attributable to the original March 4, 2003, work injury.

A hearing on the review-reopening claim was held on March 20, 2014. In the arbitration decision filed July 25, 2014, the deputy workers' compensation commissioner found a change of condition and awarded permanent total disability benefits along with medical benefits. Defendants appealed, asserting there was no change of condition or, if there was a change of condition, it was unrelated to the original work injury of March 4, 2003.

After the hearing, but before the review-reopening decision was filed, claimant filed a petition against the same employer, but against a different insurance carrier, asserting a new injury to her low back on May 9, 2014, File No. 5048705. That claim is still awaiting hearing.

The detailed arguments of the parties have been considered and the record of evidence has been reviewed de novo.

FINDINGS OF FACT

Apart from claimant's credibility, resolution of the causation issues presented in this appeal hinges on the views of three physicians. First, the treating orthopedic surgeon, Ernest Found, Jr., M.D., opined as follows on December 18, 2013:

. . . Her continued work may have allowed for a substantial aggravation of her underlying condition. However, her variety of complaints is not solely related to March of 2003. The events leading to April of 2013 when she felt that she was unable to work are difficult to define. They are not all related to March 4, 2013.

(Ex. 9, p. 130)

Another orthopedist in this case, Richard Kreiter, M.D. opined as follows on February 18, 2014:

2. Ms. Otobasic [sic] has not suffered a change in the medical condition of the fusion at the L3-4 level in the 2007 settlement. The continued work most likely caused a substantial aggravation in her condition which resulted in her asking to be taken off work.

(Ex. A, p. 1)

Robin Sassman, M.D. opined in an IME report dated October 3, 2013, that claimant's condition has worsened as follows:

Additionally, we know that when an individual undergoes a fusion of the spine, the levels above and below the fusion are placed at risk for injury as a result of the initial fusion. It appears that this is part of the issue with Ms. Odobasic as we know that her fusion was at L3-L4 and she now is having issues in the L4-L5 level as well as L5-S1. Part of this is likely due to the initial fusion surgery.

(Ex. 15, p. 9)

Consequently, there is a significant issue as to whether the insurance carrier in this case, or a subsequent insurance carrier, is liable for claimant's current condition. Also, neither could be liable due to non-work related factors.

CONCLUSIONS OF LAW

Whatever I would decide in this appeal would not be binding on the insurance carrier in the claim filed against this same employer in File No. 5048705 because that carrier is not a party to these proceedings. Also, having two proceedings on much of the same issues which may contain different evidence or expert opinions could result in inconsistent decisions.

The best approach is to not issue a decision in this case at this time, because this proceeding lacks an indispensable party. Iowa R. Civ. P. 1.234. This matter needs to be remanded back to the deputy level, consolidated with the other claim and all issues heard together.


Also, two of the above physicians opined that claimant has not reached maximum medical improvement from the asserted aggravation injury. It may be too early to determine permanency in this case.

ORDER

The arbitration decision of July 25, 2014, is reversed and the following is ordered:

1. This claim is remanded back to the deputy level, consolidated with the claim in File No. 5048705, and assigned to a deputy commissioner for hearing on all issues presented.
2. The presiding deputy shall, after the consolidated hearing, issue a proposed arbitration decision in both claims.
3. Each party shall pay their own costs for this appeal.

Signed and filed this 25th day of August, 2015.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Mark J. Sullivan
Attorney at Law
PO Box 239
Dubuque, IA 52004-0239
sullivan@rkenline.com

Maggie R. Boesen
Attorney at Law
100 E. Kimberly Rd., Ste. 400
Davenport, IA 52806
mboesen@hhlawpc.com