

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHERYL ROXANNE WILSON,  
Claimant,

vs.

JBIC, L.L.C. a/k/a JBIC MUSTANG  
EXPRESS, JULIE ANDERSON,

Employer,  
and

LIBERTY MUTUAL INSURANCE  
COMPANY d/b/a LM INSURANCE  
CORPORATION,

Insurance Carrier,  
Defendants.

File Nos. 5024004/5024005

APPEAL  
DECISION

**FILED**

**JUL 17 2009**

**WORKERS' COMPENSATION**

Head Note Nos.: 1402.40; 1704;  
1801.1; 1802; 1803; 2002; 2501;  
2701; 3003; 4000.2

Upon written delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa workers' compensation commissioner.

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 October 28, 2008 filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis and exceptions in the order of appeal issues raised by claimant:

1. Failure to specify the parts of the body subject to compensable injury for the purposes of Iowa Code section 85.27.

As I understand claimant's assertion is that she needs to know which parts of her body was impacted for the purposes of future medical disputes. First, I believe that the decision does set forth which body parts were impacted following each injury. Secondly, issues relating to future medical disputes would arise only if claimant suffered a permanent injury to a body part. The hearing deputy found that the only permanent injury occurred on September 26, 2007 based on the record presented. I must agree with that decision for the reasons stated by the deputy in the arbitration decision. The permanency finding was based primarily on the impairment rating by Dr. Kuhnlein who found a loss of range of motion to the lumbar spine. Consequently, the only permanent injury is to the lumbar spine.

2. Failure to find more than a ten percent loss of earning capacity and failure to award alternate care.

First, the deputy correctly found that neither work injury resulted in permanent restrictions on work activity. Whatever limitations on work she now has are due to preexisting conditions which were not shown to have been permanently aggravated by either work injury. As neither work injury negatively impacted her ability to obtain or sustain employment, a good argument can be made that she suffered no loss of earning capacity from the work injuries. However, there is no request in this appeal to lower the industrial award. Certainly, claimant has not shown any loss of earning capacity in excess of ten percent.

Second, the only physician to recommend additional treatment was Dr. Kuhnlein. The doctor was not particularly clear on what conditions were to be addressed at the Spine Clinic program that he suggests she attend. When the doctor discussed this in his report, he primarily refers to the anxiety disorder condition, which even he does not believe was adversely impacted by these work injuries. Therefore, I must agree with the hearing deputy that claimant failed to show that the suggested care was related to these work injuries. Also, claimant was alternatively seeking alternate care with a claim for permanency. As he apparently has no problem with the finding of permanency (except for its extent), claimant is apparently at maximum medical improvement and alternate care beyond simple maintenance services, would not be appropriate.

3. Failure to specify the medical expenses and cost amounts awarded and how and to whom they are to be paid.

The hearing deputy only issued a general order to pay the medical expenses. The only requested medical expenses set forth in attachments to the hearing report submitted at hearing consist of medical mileage. The only amount requested for the calculations in that attachment is the unreimbursed sum of \$394.99. I shall order reimbursement for that amount.

4. Failure to find due and payment dates for the disability awards.

Claimant seeks these dates in order to calculate interest. While such dates are determinable from judicial precedents interpreting Iowa Code section 85.30, Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261-262 (Iowa 1996) and Robbenolt v. Snap-On Tools Corp., 555 N.W.2d 229, 234-236 (Iowa 1996), the various due and payment dates for the disability awards set forth by claimant in the attachments to the prehearing report and claimant's post hearing brief appear to be consistent with these judicial precedents. Defendants have not provided any alternative information. Therefore, I adopted claimant's proposed due and payment dates. I cannot accept the interest calculations as they are based upon a different rate of compensation.

5. Failure to award penalties.

First, I agree that the payment of any permanency benefits is fairly debatable and no penalties will be awarded for any late payment or deficient permanency benefits.

Second, the hearing deputy correctly found that the only conditions causing permanent restrictions from work activity were found to have preexisted these work injuries and not materially impacted by the injuries, I conclude that the work relatedness of any period of temporary or temporary partial disability in this case was fairly debatable. One could reasonable argue that any of these temporary absences from work were due the non-work related anxiety disorder. Therefore, although the hearing deputy corrected awarded various healing periods and temporary partial disability, no penalty will be assessed for any late or deficient voluntary payments of those benefits prior to hearing.

6. Failure to commence permanency benefits on October 19, 2007 rather than January 9, 2008.

I agree with claimant that commencing permanency benefits on January 9, 2008 was improper. I also agree that such benefits commence at the end of the healing period. However, in this case the last healing period ended on December 22, 2007. Consequently, the permanency benefits shall commence December 23, 2007.

7. Failure to award the cost of Dr. Kuhnlein's independent disability evaluation pursuant to Iowa Code section 85.39.

I cannot agree with the hearing deputy that an employer retained physician did not make a disability determination prior to the evaluation by Dr. Kuhnlein. The deputy felt that only an impairment rating qualifies as a disability determination under the statute. This is not correct. Two doctors retained by defendants (Drs. Ray and Igram) issued opinions that claimant reached maximum medical improvement and could return to work without restrictions on work activity. This opinion clearly relates to claimant's disability, especially in an industrial case where the ability to work and earn wages is a vital concern.

The entire \$5,612.50 fee will be awarded.

#### ORDER

File No. 5024004 (DOI July 17, 2007):

In addition to the orders in the arbitration decision, the various due dates and dates of voluntary payments for the weekly benefits awarded contained in the attachment to the hearing report and in claimant's post hearing brief are adopted as if fully set out herein.

File No. 5024005 (DOI September 26, 2007):

The commencement date for permanent partial disability benefits awarded is changed to December 23, 2007.

Additionally, the various due dates and dates of voluntary payments for the weekly benefits awarded contained in the attachment to the hearing report and in claimant's post hearing brief are adopted as if fully set out herein.

Both Files:


The orders relating to medical expenses and Dr. Kuhnlein's fee are stricken and the following is inserted in lieu thereof:

Defendants shall pay to clamant the sum of three hundred ninety-four and 99/100 dollars (\$394.99) for her unreimbursed medical mileage expenses.

Defendants shall pay to clamant the sum of five thousand six hundred twelve and 50/100 dollars (\$5,612.50) for full reimbursement of Dr. Kuhnlein's fee for an independent evaluation of disability pursuant to Iowa Code section 85.39.

Defendants are assessed all costs of these actions and the costs of these appeals.

Signed and filed this 17<sup>th</sup> day of July, 2009.

  
LARRY WALSHIRE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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