

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON WENNING,

Claimant,

vs.

ERJ DINING d/b/a CHILI'S GRILL AND
BAR,

Employer,

and

ZURICH AMERICAN INS. CO.,

Insurance Carrier,
Defendants.File Nos. 20012604.01
20700923.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1402.50;
1403.10; 1403.30; 1802; 1803;
2401; 2501; 2502; 2701; 2907;

Claimant Jason Wenning appeals from an arbitration decision filed on June 28, 2022. Defendants ERJ Dining d/b/a Chili's Grill and Bar, employer, and its insurer, Zurich American Insurance Company, respond to the appeal. The case was heard on January 10, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 14, 2022.

In the arbitration decision, in File No. 20012604.01, the deputy commissioner found claimant failed to meet his burden of proof to establish he sustained an injury to his low back caused by the stipulated March 4, 2019, work injury. The deputy commissioner found that while claimant sustained injuries to his bilateral arms and hands from the March 4, 2019, work injury, claimant failed to prove those conditions caused any temporary or permanent disability. The deputy commissioner found defendants are responsible for the outstanding medical bills from Steindler Orthopedic Clinic, Corridor Radiology, and North Liberty Family Health set forth in Exhibit 6, but the deputy commissioner found claimant failed to prove the remaining medical bills are related to the work injury. The deputy commissioner found claimant failed to prove the future medical treatment recommended by Physicians' Clinic of Iowa is causally related to the March 4, 2019, work injury.

In File No. 20700923.01, the deputy commissioner found claimant sustained a work-related injury to his right knee on March 9, 2019, and the deputy commissioner found claimant provided defendants with timely notice of the March 9, 2019, work injury. The deputy commissioner found claimant is entitled to medical treatment for his right knee condition and ordered defendants to authorize treatment for that condition. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of the July 2021, independent medical examination (IME) of claimant performed by Charles Wenzel, D.O., but found that pursuant to section 85.39, defendants should reimburse claimant for the \$3,162.00 cost of Dr. Wenzel's December

2021 supplemental IME. The deputy commissioner found that pursuant to rule 876 IAC 4.33, defendants should reimburse claimant \$2,020.90 for the cost of Dr. Wenzel's July 2021 IME report, \$200.00 for the cost of the filing fees, and \$68.25, for the cost of claimant's deposition.

On appeal, in File No. 20012604.01, claimant asserts the deputy commissioner erred in finding claimant failed to prove his bilateral arm and hand conditions were caused by, or substantially aggravated by, the March 4, 2019, work injury, and claimant asserts he is entitled to a running award of healing period benefits. Claimant asserts the deputy commissioner erred in finding he is not entitled to future medical care for his bilateral arm conditions. Claimant asserts the deputy commissioner erred in finding defendants are not liable for all medical expenses for his bilateral arm conditions.

Claimant's appeal in this matter is limited to File No. 20012604.01. Claimant does not raise any issues on appeal in File No. 20700923.01.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

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

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 June 28, 2022, 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.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings concerning claimant's credibility. The deputy commissioner found claimant was not a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, 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. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

In File No. 20012604.01, I affirm the deputy commissioner's finding that claimant failed to prove he sustained an injury to his low back caused by the March 4, 2019, work injury. I affirm the deputy commissioner's finding that while claimant sustained injuries to his bilateral arms and hands as a result of the March 4, 2019, work injury, claimant failed to prove those conditions caused any temporary or permanent disability. I affirm

the deputy commissioner's finding that defendants are responsible for the outstanding medical bills from Steindler Orthopedic Clinic, Corridor Radiology, and North Liberty Family Health set forth in Exhibit 6, and I affirm the deputy commissioner's finding that claimant failed to prove the remaining medical bills are related to the March 4, 2019, work injury. I affirm the deputy commissioner's finding that claimant failed to prove the future medical treatment recommended by Physicians' Clinic of Iowa is causally related to the March 4, 2019, work injury.

In File No. 20700923.01, I affirm the deputy commissioner's finding that claimant sustained a work injury to his right knee on March 9, 2019, and I affirm the deputy commissioner's finding that claimant provided defendants with timely notice of the March 9, 2019, work injury. I affirm the deputy commissioner's finding that claimant is entitled to medical treatment for his right knee condition, and I affirm the deputy commissioner's order that defendants shall authorize treatment for claimant's right knee condition. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of Dr. Wenzel's July 2021 IME. I affirm the deputy commissioner's finding that pursuant to section 85.39, claimant is entitled to reimbursement from defendants for the \$3,162.00 cost of Dr. Wenzel's December 2021 supplemental IME. I affirm the deputy commissioner's finding that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants for the \$2,020.90 cost of Dr. Wenzel's July 2021 IME report, \$200.00 for the cost of the filing fees, and \$68.25, for the cost of claimant's deposition.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 28, 2022, is affirmed in its entirety.

For File No. 20012604.01 – Date of Injury March 4, 2019:

Claimant shall take nothing further in the way of indemnity benefits.

Defendants shall pay the unpaid medical expenses set forth in Exhibit 6 from Steindler Orthopedics, Corridor Radiology, and North Liberty Family Health Care.

For File 20700923.01 – Date of Injury March 9, 2019:

Defendants shall authorize evaluation and treatment for claimant's right knee condition, if requested.

For Both Files:

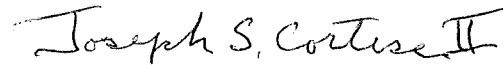
Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant three thousand one hundred sixty-two and 00/100 dollars (\$3,162.00) for the cost of Dr. Wenzel's December 2021 supplemental IME.

Pursuant to rule 876 IAC 4.33, defendant shall reimburse claimant two hundred and 00/100 dollars (\$200.00) for the cost of the filing fees, two thousand twenty and 90/100 dollars (\$2,020.90) for the cost of Dr. Wenzel's July 2021 IME report, sixty-eight

and 25/100 dollars (\$68.25) for the cost of claimant's deposition, 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 14th day of October, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Charles Cutler (via WCES)

Gregory Taylor (via WCES)

Timothy Wegman (via WCES)