

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TINA KILKER,	:	
Claimant,	:	
vs.	:	
MENARDS, INC.,	:	File No. 5063551
Employer,	:	A P P E A L
and	:	D E C I S I O N
XL INSURANCE COMPANY,	:	
Insurance Carrier,	:	Head Notes: 1402.40; 1803; 2502; 2907;
Defendants.	:	5-9998

Claimant Tina Kilker appeals from an arbitration decision filed on October 3, 2019. Defendants Menards, Inc., employer, and its insurer, XL Insurance Company, respond to the appeal. The case was heard on May 24, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 25, 2018. The case was delegated to a different deputy workers' compensation commissioner on July 25, 2019, for issuance of the arbitration decision.

The deputy commissioner found claimant failed to carry her burden of proof to establish her December 3, 2016, work-related injury resulted in permanent disability. The deputy commissioner found claimant is not entitled to receive permanent disability benefits for the work injury. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendant for the cost of the independent medical examination (IME) of claimant performed by Sunil Bansal, M.D., on April 10, 2018. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove she sustained permanent disability as a result of the work injury. Claimant asserts it should be found on appeal that she is entitled to receive industrial disability benefits.

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.

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 October 3, 2019, which relate to the issues properly raised on intra-agency appeal.

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 of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant failed to prove she sustained permanent disability as a result of the December 3, 2016, work injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive permanent disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 3, 2019, is affirmed in its entirety.

Claimant shall take nothing in the way of permanent partial disability benefits from this matter.

Defendants shall reimburse claimant for costs associated with Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, each party shall pay their own costs of the arbitration proceeding, 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 30th day of June, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Randall Schueller (via WCES)

Charles Blades (via WCES)