

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBRA STUART,

Claimant,

vs.

DICKTEN MASCH PLASTICS, LLC,

Employer,

and

EMPLOYERS PREFERRED INS. CO.,

Insurance Carrier,
Defendants.

File No. 5056493.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 2502; 2905;
2905; 2907; 4100

Claimant Debra Stuart appeals from a review-reopening decision filed on February 9, 2022. Defendants Dickten Masch Plastics, LLC, employer, and its insurer, Employers Preferred Insurance Company, respond to the appeal. The case was heard on August 10, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 15, 2021.

In the review-reopening decision, the deputy commissioner found claimant failed to meet her burden of proof to establish she is entitled to a reopening or an increase in her prior industrial disability award due to a change of physical or economic condition, and the deputy commissioner declined to award claimant additional industrial disability benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of the independent medical examination (IME) of claimant performed by Jacqueline Stoken, D.O. The deputy commissioner ordered the parties to pay their own costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove she is entitled to a reopening or an increase in her prior industrial disability award because claimant asserts she proved she sustained a change of physical and economic condition, and claimant asserts she proved she is entitled to permanent total disability benefits under the statute and under the odd-lot doctrine.

Defendants assert on appeal that the review-reopening decision should be affirmed in its entirety.

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

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 review-reopening decision filed on February 9, 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 review-reopening 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 is entitled to a reopening or an increase in her prior industrial disability award due to a change of physical or economic condition, and I affirm the deputy commissioner's finding that claimant is not entitled to additional industrial disability benefits. 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. Stoken's IME. I affirm the deputy commissioner's order that the parties pay their own costs of the review-reopening proceeding.

Some of the findings by the deputy commissioner in the review-reopening decision were based on the deputy commissioner's findings regarding the credibility of claimant and witnesses testifying on claimant's behalf. The deputy commissioner found the subjective testimony was not supported by the objective medical evidence. I find the deputy commissioner correctly assessed claimant's credibility and the credibility of the other witnesses in the case. 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 and the witnesses testifying on claimant's behalf by the deputy commissioner who presided at the review-reopening 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 and the credibility of the other witnesses.

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

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on February 9, 2022, is affirmed in its entirety.

Claimant shall take nothing further from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the review-reopening 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 15th day of June, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

John Dougherty (via WCES)

Nathan McConkey (via WCES)