

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DERIK STRAIT,

Claimant,

vs.

M.C. LINT, INC. d/b/a POLK COUNTY
HEATING & COOLING,

Employer,

and

UNITED FIRE & CASUALTY COMPANY,

Insurance Carrier,
Defendants.

FILED

SEP 19 2016

WORKERS' COMPENSATION

File No. 5041734

A P P E A L

D E C I S I O N

Head Note Nos.: 1100; 1108

Claimant Derik Strait appeals from an arbitration decision filed on February 19, 2015. Defendants M.C. Lint, Inc., d/b/a Polk County Heating & Cooling, employer, and United Fire & Casualty Company, its insurer, respond to the appeal. The case was heard on January 24, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 14, 2014.

The deputy commissioner found claimant failed to carry his burden of proof that he sustained a cumulative trauma injury arising out of and in the course of his employment on March 29, 2011, as alleged. The deputy commissioner awarded claimant nothing in the way of temporary disability benefits or permanency benefits. The deputy commissioner found defendants are not liable for claimant's requested expenses for medical treatment. The deputy commissioner found defendants are not liable for the expense of the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on October 11, 2013, or for the expense of the vocational report from Carma Mitchell, M.S. The deputy commissioner ordered claimant to pay the costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained a work-related cumulative trauma injury on March 29, 2011, as alleged. Claimant asserts the deputy commissioner erred in failing to award claimant temporary disability benefits and permanency benefits for the alleged March 29, 2011, work-related injury. Claimant

asserts the deputy commissioner erred in failing to award claimant the requested medical expenses. Claimant asserts the deputy commissioner erred in failing to award the expense of Dr. Bansal's IME and in failing to award the expense of Ms. Mitchell's vocational report. Claimant also asserts the deputy commissioner erred in taxing the remaining costs of the arbitration proceeding to claimant.

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

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 filed in this matter on February 19, 2015, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained a work-related cumulative trauma injury on March 29, 2011. I affirm the deputy commissioner's finding that claimant is not entitled to temporary disability benefits and permanency benefits for the alleged March 29, 2011, work-related injury. I affirm the deputy commissioner's finding that claimant is not entitled to an award of the requested medical expenses. I affirm the deputy commissioner's taxation of the remaining costs of the arbitration proceeding to claimant. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I reverse the deputy commissioner's findings that defendants are not liable for the expense of Dr. Bansal's IME and that defendants are not liable for the expense of Ms. Mitchell's vocational report. I provide the following analysis with regard to the expenses for Dr. Bansal's IME and Ms. Mitchell's vocational report:

Iowa Code Section 85.39 states that a claimant's right to an IME by a physician of the claimant's choosing at the expense of the employer is triggered when an evaluation of permanent disability has been made by a physician retained by the employer and the claimant believes that evaluation is too low. In this case, claimant's right to an IME at the expense of defendants was triggered by the reports from Jeffrey Davick, M.D., dated September 19, 2012, and March 27, 2013. (Exhibit A-4, pages 18, 21) Because Dr. Bansal's IME did not take place until October 11, 2013, pursuant to Iowa Code Section 85.39, claimant is entitled to reimbursement from defendants for the expense of that IME in the amount of \$2,975.00. (Ex. 13, pp. 214-215)

A report or an evaluation by a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. 876 IAC 4.17, Stallman v. Rockwell Collins, File No. 5027023 (Arb. Dec. December 16, 2009) Pursuant to 876 IAC 4.33,

Claimant is entitled to reimbursement in the amount of \$325.00 for the expense of Ms. Mitchell's vocational report. (Ex. 13, pp. 216-217)

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of February 19, 2015, is MODIFIED as follows:

Claimant shall take nothing from these proceedings in the way of temporary disability benefits or permanency benefits.


Defendants shall reimburse claimant in the amount of \$2,975.00 for the cost of Dr. Bansal's IME.

Defendants shall reimburse claimant in the amount of \$325.00 for the cost of Ms. Mitchell's vocational report.

Pursuant to rule 876 IAC 4.33, claimant shall pay the remaining costs of the arbitration proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 19th day of September, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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