

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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VICENTE SOLIZ,	:	
Claimant,	:	
vs.	:	
FARMLAND FOODS, INC.,	:	
Employer,	:	
and	:	
SAFETY NATIONAL,	:	
Insurance Carrier,	:	
Defendants.	:	

**FILED**  
**MAR 7 2018**  
**WORKERS' COMPENSATION**  
File No. 5047856  
**A P P E A L**  
**D E C I S I O N**

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Head Note Nos: 1100; 1402.30; 1804; 2206;  
2209; 2501; 2907

Defendants Farmland Foods, Inc., employer, and its insurer, Safety National, appeal from an arbitration decision filed on August 26, 2016. Claimant Vicente Soliz responds to the appeal. The case was heard on November 19, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 16, 2015.

The deputy commissioner found claimant carried his burden of proof that he sustained an injury which arose out of and in the course of claimant's employment with defendant-employer on September 10, 2013. The deputy commissioner found claimant is permanently and totally disabled as a result of the work injury, which the deputy commissioner found entitles claimant to receive permanent total disability benefits commencing on January 28, 2014. The deputy commissioner found claimant is entitled to payment or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 19. The deputy commissioner found claimant is entitled pursuant to Iowa Code section 85.39 to reimbursement from defendants for the cost of an independent medical evaluation (IME) performed by Sunil Bansal, M.D., on March 19, 2015. The deputy commissioner also taxed defendants with the following requested costs of the arbitration proceeding totaling \$1,623.38: \$100.00 for claimant's filing fee; \$13.38 for claimant's service fee; and \$1,510.00 for the cost of the psychological report of Catalina D. Ressler, Ph.D.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury on September 10, 2013. Defendants assert the deputy commissioner erred in finding claimant is permanently and totally disabled as a

result of the work injury and in awarding claimant permanent total disability benefits for the work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 19. Defendants assert the deputy commissioner erred in finding claimant is entitled to reimbursement from defendants for the cost of Dr. Bansal's IME. Defendants also assert the deputy commissioner erred in taxing defendants with more than \$300.00 for the cost of Dr. Ressler's report.

Claimant asserts 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 August 26, 2016, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant sustained a work-related injury on September 10, 2013. I affirm the deputy commissioner's finding that claimant is permanently and totally disabled as a result of the work injury and I affirm the deputy commissioner's award of permanent total disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant is entitled to payment or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 19. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I reverse the deputy commissioner's finding that claimant is entitled to reimbursement pursuant to Iowa Code section 85.39 for the cost of Dr. Bansal's IME. I also reverse the deputy commissioner's taxation of \$1,510.00 for Dr. Ressler's report and I find claimant is entitled to reimbursement in the amount of \$300.00 for the cost of that report. I provide the following analysis for my decision:

Dr. Bansal's IME Charge:

The deputy commissioner found the cost of Dr. Bansal's IME was recoverable by claimant under Iowa Code section 85.39 because Dr. Woollen and Dr. Wampler opined claimant did not sustain a work-related injury. (Arbitration Decision, page 14) The deputy commissioner found Drs. Woollen and Wampler had, in effect, given "zero" impairment ratings. (Id.) No legal authority was cited in support of this finding. Moreover, this position is contrary to the Iowa Supreme Court's literal interpretation of Iowa Code section 85.39. See, e.g., Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 847 (Iowa 2015) In that decision, the supreme court held that an employee can obtain an IME at the employer's expense only if an evaluation of permanent disability has been made by an employer-retained physician. The evaluations of Drs. Wampler and Woollen were not evaluations of permanent

impairment, but rather were evaluations to determine causation. This is a distinct difference. The record in this case shows there was no impairment rating from any physician chosen by defendants because defendants determined there was no work injury. There is no evidence claimant obtained defendants' consent to the IME, nor did defendants agree to pay the cost of the IME. As such, claimant cannot recover the cost of Dr. Bansal's IME from defendants under section 85.39. As the deputy commissioner duly noted, the cost of Dr. Bansal's IME also is not recoverable from defendants under rule 876-4.33 as a taxable cost. Therefore, I reverse the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for the cost of Dr. Bansal's IME.

Dr. Ressler's IME Charge:

In the arbitration decision, the deputy commissioner taxed defendants with the full \$1,510.00 cost of Dr. Ressler's IME. In DART, supra, at 845-846, the Iowa Supreme Court addressed whether an IME expense could be awarded as a cost for obtaining a practitioner's report. The Supreme Court stated that Iowa Code section 86.40 is "confined to costs attributable to the hearing and excludes medical treatment and evaluations" thus eliminating the statutory conflict between sections 85.39 and 86.40. The court held:

A "report" is a "formal oral or written presentation of facts or a recommendation for action." Black's Law Dictionary 1492 (10<sup>th</sup> ed. 2014). The word "obtain" is used as a modifier in the rule and means "[t]o bring into one's own possession; to procure, esp[ecially] through effort." Id. at 1247. Thus, the concept of obtaining a report for a hearing is separate from the concept of a physical examination. A "physical examination" is "[a]n examination of a person's body by a medical professional to determine whether the person is healthy, ill or disabled." Id. at 680. The concept of "obtaining" a report is separate from the process of "obtaining" an examination. Our legislature recognized as much by separately authorizing the commissioner to appoint "a duly qualified, impartial physician to examine the injured employee and make report." Iowa Code §86.38. A medical report for purposes of a hearing is aligned with a prehearing medical deposition. In the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition.

(867 N.W.2d 839, 845-846)

Dr. Ressler's invoice confirms the requested \$1,510.00 cost is not for "obtaining" a report for a hearing as contemplated by IAC section 876-4.33 and the supreme court's interpretation thereof and thus may not be taxed as such a cost. As stated in Dr. Ressler's invoice, the cost of the actual report itself was \$300.00. The remaining \$1,210.00 of the \$1,510.00 charge was for testing, records review and interview. (Exhibit 8, p. 183) The \$300.00 charge for the report itself is a taxable cost. The

remaining \$1,210.00 of Dr. Ressler's fee is not taxable and the deputy commissioner's taxation of that \$1,210.00 is reversed,

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 26, 2016, is MODIFIED as follows:

Defendants shall pay claimant permanent total disability benefits commencing January 28, 2014, at the rate of four hundred sixty-one and 56/100 dollars (\$461.56), and continuing for all periods of disability.

Defendants shall receive a credit for all benefits paid to claimant under Iowa Code section 85.38(2).

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall pay/reimburse the medical expenses itemized in Exhibit 19.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$413.38, and the parties shall split 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 this 7<sup>th</sup> day of March, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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