

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CYNTHIA WHEELER,

Claimant,

vs.

M & T INVESTMENTS,

Employer,

and

GRINNELL MUTUAL REINSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5066144

A P P E A L

D E C I S I O N

: Head Notes: 1402.20; 1402.40; 1802; 1803;
: 2206; 2501; 2502; 2701; 2907;
: 3002; 5-9998

Defendants M&T Investments, employer, and its insurer, Grinnell Mutual Reinsurance Company, appeal from an arbitration decision filed on April 22, 2020, and from a ruling on motion for rehearing/reconsideration filed on April 27, 2020. Claimant Cynthia Wheeler responds to the appeal. The case was heard on January 23, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 7, 2020.

The deputy commissioner found claimant carried her burden of proof to establish she sustained a work-related injury on May 10, 2016, as alleged, which resulted in a permanent material aggravation of claimant's pre-existing right knee condition. The deputy commissioner found claimant to be a credible witness. The deputy commissioner found claimant is entitled to receive healing period benefits for the injury from May 1, 2017, through July 18, 2017. The deputy commissioner found claimant sustained permanent scheduled member functional disability of five percent of the right lower extremity, which entitles claimant to receive eleven weeks of permanent partial disability benefits commencing on May 17, 2016. The deputy commissioner found claimant is entitled to claim married status with two exemptions in calculating her weekly workers' compensation benefit rate. The deputy commissioner found claimant is entitled to payment by defendants for the requested past medical expenses from Physician's Clinic of Iowa and Mercy Medical Center only, itemized in claimant's Exhibit 3. The deputy commissioner found claimant is entitled to alternate medical care in the form of ongoing treatment by James Pape, M.D., including a right total knee replacement. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of

\$1,000.00 for the cost of the independent medical evaluation (IME) of claimant performed by Dr. Pape. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$726.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury and in finding claimant sustained permanent disability as a result of the alleged injury. Defendants assert the deputy commissioner erred in finding claimant to be a credible witness. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits and permanent disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to claim married status with two exemptions in calculating her weekly benefit rate. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for the requested past medical expenses. Defendants assert the deputy commissioner erred in finding claimant is entitled to alternate medical care.

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.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 22, 2020, and the ruling on motion for rehearing/reconsideration filed on April 27, 2020, 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 proved she sustained a work-related injury on May 10, 2016, which resulted in a permanent material aggravation of claimant's pre-existing right knee condition. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits for the injury from May 1, 2017, through July 18, 2017. I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of five percent of the right lower extremity, which entitles claimant to receive eleven weeks of permanent partial disability benefits commencing on May 17, 2016. I affirm the deputy commissioner's finding that claimant is entitled to claim married status with two exemptions in calculating her weekly benefit rate. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses from Physician's Clinic of Iowa and Mercy Medical Center. I affirm the deputy commissioner's finding that claimant is entitled to alternate medical care in the form of ongoing treatment by Dr. Pape, including a right total knee replacement. I affirm the

deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the cost of Dr. Pape's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$726.00.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. The deputy commissioner found claimant to be credible. I find the deputy commissioner correctly assessed claimant's credibility. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings. Thus, I affirm the deputy commissioner's finding that claimant was a credible witness.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 22, 2020, and the ruling on motion for rehearing/reconsideration filed on April 27, 2020, are affirmed in their entirety.

Defendants shall pay claimant healing period benefits from May 1, 2017, through July 18, 2017, at the weekly rate of one hundred sixty-one and 61/100 dollars (\$161.61).

Defendants shall pay claimant eleven (11) weeks of permanent partial disability benefits at the weekly rate of two hundred six and 75/100 dollars (\$206.75) commencing on May 17, 2016.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay the requested past medical expenses from Physician's Clinic of Iowa and Mercy Medical Center only, itemized in claimant's Exhibit 3. Those bills which have been paid by claimant's private insurance carrier shall be reimbursed directly to claimant.

Defendants shall provide claimant with alternate medical care in the form of ongoing treatment by Dr. Pape, including a right total knee replacement.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of one thousand dollars (\$1,000.00) for the cost of Dr. Pape's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of seven hundred twenty-six and no/100 dollars (\$726.00), and defendants 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 5th day of January, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Currie (via WCES)

Stephen Spencer (via WCES)

Christopher Spencer (via WCES)