

arbitration decision filed on June 18, 2019, is affirmed in part without additional comment and modified in part.

I affirm the deputy commissioner's finding that claimant's cervical condition was permanently aggravated by the work injury. In doing so, I affirm the deputy commissioner's reliance on the opinions of Dr. Mathew. I also specifically affirm the deputy commissioner's finding that Chad Abernathy, M.D., and Frank E. Hawkins, M.D., failed to address whether claimant's work permanently aggravated his degenerative cervical spine condition. I affirm the deputy commissioner's finding that claimant sustained 70 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that defendant shall provide reasonable medical care for claimant's cervical condition.

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

However, for the reasons that follow, the deputy commissioner's cost assessment is modified.

The deputy commissioner awarded \$1,063.20 for the entirety of the charges relating to Dr. Mathew's October 12, 2018, report. That report was a supplement to Dr. Mathew's initial May 3, 2018, report.

However, under the Iowa Supreme Court's holding in DART v. Young, 867 N.W.2d 839 (Iowa 2015), only the cost associated with the preparation of a written report of a claimant's IME can be assessed as a cost at hearing under Iowa Administrative Code rule 876-4.33. See 867 N.W.2d at 846-847. The court specifically held that "underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. at 846. Relying on this language, I have previously found that the expenses associated with a physician's review of medical records are expenses associated with an examination and therefore cannot be taxed under rule 876 IAC 4.33(6). See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec., Dec. 17, 2018).

In this case, Dr. Mathew's bill indicates he charged \$450.60 for a "chart review" and \$612.60 for a "disability rating," which defendant concedes is Dr. Mathew's report. Because I have previously concluded that expenses related to records reviews are not taxable, I conclude it is not appropriate to tax \$450.60 for Dr. Mathew's chart review. The deputy commissioner's cost assessment is therefore modified to reflect only the expenses associated with Dr. Mathew's report. Claimant is awarded total costs in the amount of \$757.22.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 18, 2019, is affirmed in part and modified in part.

Defendant shall pay claimant three hundred fifty (350) weeks of permanent partial disability benefits at the weekly rate of four hundred ninety-nine and 10/100 dollars (\$499.10) commencing on September 13, 2018.

Defendant shall receive credit for all benefits previously paid.

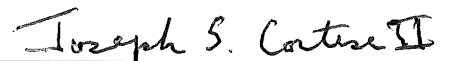
Defendant shall provide medical care chosen by defendant for claimant's cervical condition as set forth in the arbitration decision.

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).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of seven hundred fifty-seven and 22/100 dollars (\$757.22), and defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 15th day of May, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

J. Richard Johnson Via WCES

James L. Drury II Via WCES

Jason Wiltfang Via WCES