BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JANET PARRISH, Claimant, vs. ABCM CORPORATION d/b/a SOUTHFIELD WELLNESS COMMUNITY, Employer, and SAFETY NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED SEP 26 2018 WORKERS' COMPENSATION File No. 5053102 A P P E A L D E C I S I O N Head Note Nos: 1108.20; 1802; 1803; 1803.1; 2501; 2907; 4000.2

Claimant Janet Parrish appeals from an arbitration decision filed on February 9, 2017. Defendants ABCM Corporation d/b/a Southfield Wellness Community, employer, and its insurer, Safety National Insurance Company, respond to the appeal. The case was heard on October 17, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 21, 2016.

In the arbitration decision, the deputy commissioner found claimant failed to carry her burden of proof that her March 6, 2014, work-related left knee injury was a substantial causative factor in the development of her depression and anxiety or that it materially aggravated, accelerated, worsened, or lit up her underlying and pre-existing depression and/or anxiety. Having determined claimant's injury was limited to a scheduled member, the deputy commissioner found claimant sustained a 12 percent impairment of her left leg, which entitles her to 26.4 weeks of permanent partial disability (PPD) benefits commencing on April 22, 2014. The deputy commissioner found claimant's benefits should be paid at the weekly rate of $230.89, based on a gross average weekly wage of $353.28. Based on defendants' admitted underpayment of benefits, the deputy commissioner found claimant proved entitlement to penalty benefits in the amount of $25.00. The deputy commissioner also found claimant proved she was entitled to receive reimbursement for medical expenses in the amount of $123.38 and mileage in the amount of $57.50. Lastly, the deputy commissioner assessed the cost of claimant's filing fee, $100.00, to defendants.

On appeal, claimant argues the deputy commissioner erred in his determination that claimant's knee injury did not cause or aggravate claimant's depression and

anxiety. Claimant asserts she is permanently and totally disabled or, in the alternative, an odd-lot employee based on the combination of her knee injury and the aggravation of her psychological condition. Should it be determined on appeal that claimant's knee injury aggravated her psychological condition, claimant argues she is entitled to penalty benefits for the delay in defendants' investigation of her mental injury claim and to reimbursement for medical treatment related to her depression. Finally, claimant asserts the deputy commissioner erred in not taxing the costs of the psychological evaluation and report from Dan L. Rogers, Ph.D., the report from Nicole Ehn, M.D., and the vocational assessment performed by Karen Stricklett, MS, to defendants.

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.

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 February 9, 2017 relating to the issues properly raised on intra-agency appeal with additional analysis, as set forth below:

With respect to claimant's assertion that her left knee injury aggravated her underlying psychological condition, claimant argues the deputy commissioner improperly "assume[d], without referring to any evidence or proof[,] that [claimant's] depression, anxiety and mental health were the same after her injury as they were before her injury." (Claimant's Appeal Brief) This mischaracterizes both the deputy's findings and the legal standard for determining whether a pre-existing condition is made compensable by a work injury.

The proper legal analysis of a claimant's pre-existing condition in the context of a workers' compensation claim is not as simple as making a temporal comparison between claimant's pre-injury symptoms and post-injury symptoms. While such a comparison is undoubtedly part of the analysis, the ultimate question is whether the preexisting condition or disability is materially aggravated, accelerated, worsened or lighted up by the work injury. See Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961). In the instant case, it is clear, based on the deputy commissioner's well-reasoned and thorough explanation, that he considered and weighed all of the medical evidence and expert opinions and employed the appropriate analysis.

On appeal, claimant urges the deputy commissioner erred by disregarding the opinions of Dr. Rogers. Like the deputy commissioner, I find it concerning that Dr. Rogers did not review claimant's prior medical records in light of claimant's extensive history with depression and anxiety, especially when claimant was aware, or should have been aware, that the pre-existing nature of her psychological condition would be a fighting issue in this case. Furthermore, Dr. Rogers' report focuses primarily on claimant's underlying intellectual abilities and whether she is clinically mentally retarded

and not on the impact of her work injury on her pre-existing psychological condition. (See Exhibit 16, pp. 5-7) For these reasons, I do not find Dr. Rogers' report to be persuasive with respect to whether claimant's pre-existing psychological condition was aggravated by her work injury.

Claimant also argues the deputy commissioner erred when he questioned whether Ms. Ohrt was fully aware of the extent of claimant's pre-existing depression. (Arb. Dec., p. 7) In support of her argument, claimant provides examples of records in which Ms. Ohrt makes mention of claimant's history of depression. The problem with those examples, however, is that they all rely on claimant's self-reporting, and claimant admitted at hearing that she was not completely forthcoming about her past to Ms. Ohrt. (Hearing Transcript, p. 106) Thus, I agree with the deputy commissioner that it is unclear to what extent Ms. Ohrt was aware of claimant's mental health history.

Further, Ms. Ohrt stated in her January 7, 2016, letter to claimant's attorney that claimant "did not have a 'pre-existing' depression to be aggravated" and that claimant only had "a brief period of depression many years ago following a personal issue." (Ex. 14, p. 1) This is simply not accurate. Claimant herself acknowledged at hearing that she had a "long history of depression problems for many, many years" and that she was "under the care of various doctors for that for many, many years." (Tr., p. 83; see Ex. G) For these reasons, I do not find persuasive Ms. Ohrt's opinion that claimant's work injury put her into a depression.

The deputy commissioner found the opinions of Amy Mooney, Ph.D., and Terrence Augspurger, M.D., to be most convincing. (Arb. Dec., p. 9) I agree. Dr. Mooney and Dr. Augspurger opined that claimant's "mental disorders are pre-existing" and "[i]t cannot be said with reasonable medical certainty that they have been materially aggravated by the injury." (Ex. C, p. 8) This opinion is consistent with the fact that just three months before the work injury, claimant was experiencing what she described as "significant depression." (Tr., p. 94) She reported to Dr. Ehn on December 5, 2013, that her "mood is just really low and she feels irritable." (Ex. G, p. 32) Dr. Ehn found claimant's complaints at that appointment to be serious enough to increase her antidepressant dosage from 20 milligrams daily to 40 milligrams daily. (Ex. G, p. 34) While claimant testified she stopped taking antidepressants shortly thereafter, it was not at the direction of her physician. She decided to discontinue the medication on her own. (Tr., pp. 47, 94-95) Thus, as did the deputy commissioner, I find the opinions of Dr. Mooney and Dr. Augspurger to be most persuasive in light of claimant's long history of prior mental health treatment which continued essentially up to her date of injury.

With this additional analysis, I affirm the deputy commissioner's finding that claimant's March 6, 2014, left knee injury and the resulting symptoms were not a substantial causative factor in the development of her subsequent depression and anxiety. I likewise affirm the deputy commissioner's finding that the March 6, 2014, left knee injury and resulting symptoms did not materially aggravate, accelerate, worsen or light up claimant's underlying and pre-existing depression and/or anxiety. In light of these findings, I affirm the deputy commissioner's conclusion that claimant failed to establish defendant's liability for any mental health claims.

Having affirmed the deputy commissioner's finding that claimant's March 6, 2014, left knee injury and resulting symptoms did not permanently aggravate her pre-existing psychological condition, I affirm the deputy commissioner's finding that claimant's claim is compensated as a scheduled member injury pursuant to Iowa Code section 85.34(o). I likewise affirm the deputy commissioner's finding that claimant cannot legally establish odd-lot employee status and she also failed to make a prima facie case under the facts of this case.

Because I affirm the deputy commissioner's finding that claimant did not establish defendants' liability for any mental health claims, I affirm the deputy commissioner's conclusion that no penalty is appropriate for defendants' delay in investigating claimant's alleged mental injury. I likewise affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement for medical treatment and corresponding mileage relating to her mental health condition.

Lastly, claimant argues the deputy commissioner erred in his assessment of costs. Claimant asserts the deputy commissioner erred as a matter of law in his determination that claimant was not entitled to reimbursement for Dr. Rogers' evaluation and report under Iowa Code section 85.39. Iowa Code section 85.39 requires "an evaluation of permanent disability . . . by a physician retained by the employer" before its reimbursement provisions are triggered. See Iowa Code section 85.39. In this case, there was no such evaluation. While Dr. Mooney and Dr. Augspurger, who were retained by defendants, addressed causation, they did not specifically address or provide an evaluation of permanent disability. Thus, I affirm the deputy commissioner's determination that claimant failed to prove her entitlement to reimbursement under Iowa Code section 85.39. I also affirm the deputy commissioner's determination that defendants should not be assessed the cost of Dr. Rogers' report under rule 876 IAC 4.33 given claimant's failure to prevail on her mental injury claim.

In light of claimant's failure to prevail on her mental injury claim, I agree with the deputy commissioner that the costs of the reports authored by Dr. Ehn and Ms. Stricklett should not be assessed to defendants. Dr. Ehn's report was not relied upon and Ms. Stricklett's report was rendered meaningless because the case was evaluated as a scheduled injury.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision, filed on February 9, 2017, is affirmed in its entirety with my additional analysis.

Defendants shall pay claimant for the underpayment of healing period benefits such that all healing period benefits are paid at the weekly rate of two hundred thirty and 89/100 dollars ($230.89).

Defendants shall pay claimant twenty-six point four (26.4) weeks of permanent partial disability benefits commencing on April 22, 2014, at the weekly rate of two hundred thirty and 89/100 dollars ($230.89).

Defendants shall pay all accrued weekly benefits in lump sum. 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 receive the credit stipulated by the parties on the hearing report.

Defendants shall reimburse, pay directly to medical providers if unpaid, or otherwise hold claimant harmless for the medical expenses found to be related in the body of this decision totaling one hundred twenty-three and 38/100 dollars ($123.38).

Defendants shall reimburse claimant's medical mileage totaling fifty-seven and 50/100 dollars ($57.50).

Defendants shall pay claimant penalty benefits totaling twenty-five and 00/100 dollars ($25.00).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of $100.00 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 26th day of September, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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