BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DOUGLAS DAVID DAVIS, SR.,

Claimant,

vs.

BOWLING MOTORS AND RV SALES,

Employer,

and

FIRSTCOMP UNDERWRITERS

Insurance Carrier,
Defendants.

File No. 5051704

APPEAL

DECISION

Head Note Nos: 1804; 2501; 5-9999

Defendants Bowling Motors and RV Sales, employer, and its insurer, FirstComp Underwriters, appeal from an arbitration decision filed on April 27, 2017. Claimant Douglas David Davis, Sr., responds to the appeal. The case was heard on March 21, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 28, 2017.

The deputy commissioner found claimant to be unemployable in the competitive labor market due to the stipulated injury that arose out of and in the course of his employment on December 22, 2012. More specifically, the deputy commissioner found claimant's December 22, 2012, work injury was a cause of 100 percent industrial disability, entitling claimant to permanent total disability benefits to commence on December 22, 2012, at the stipulated weekly rate of $1,075.96. The deputy commissioner also found defendants responsible for all remaining unpaid medical expenses as identified in bold in Exhibit 7. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant to be permanently and totally disabled. Defendants also assert the deputy erred in awarding the medical expenses identified in Exhibit 7.

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, those portions of the proposed arbitration decision filed on April 27, 2017 relating to issues properly raised on intra-agency appeal are affirmed and adopted as the final agency decision with additional analysis.

Regarding the first issue on appeal, whether claimant is permanently and totally disabled, I find the deputy commissioner provided a well-reasoned analysis, and I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to this issue.

As such, I affirm the deputy commissioner's finding that claimant is unemployable in the competitive labor market due to the stipulated injury that arose out of and in the course of his employment on December 22, 2012. I likewise affirm the deputy commissioner's finding that claimant's December 22, 2012, work injury was a cause of 100 percent industrial disability that entitles claimant to permanent total disability benefits commencing on December 22, 2012, at the stipulated weekly rate of $1,075.96.

The deputy commissioner's finding that defendants are responsible for all unpaid medical expenses identified in bold in Exhibit 7 is also affirmed with the following additional analysis:

FINDINGS OF FACT

The medical expenses for which claimant seeks payment are contained in Claimant's Exhibit 7. The first charges in dispute are those related to claimant's suicide attempt in January 2015 (Ottumwa Regional Health Center; Covenant Clinic; Radiology Associates; and Apogee Medical Group). (Ex. 7, pp. 2-3) Defendants argue there is nothing in the record relating the suicide attempt to the work injury. I disagree. In a report authored by John F. Tholen, Ph.D., Dr. Tholen states:

> The evidence strongly supports a reasonable medical probability that [claimant's] 12-21-12 [sic] industrial cervical spine injury has represented the predominant cause of the Major Depressive and Generalized Anxiety Disorders that he displays upon examination today, and which resulted in his brief psychiatric hospitalization at the beginning of 2015.

(Joint Ex. 14, p. 29)

Having affirmed the deputy commissioner's finding that the causation opinion of Dr. Tholen is uncontroverted, I find claimant's suicide attempt and resulting hospitalization and in-patient care is causally related to claimant's December 22, 2012 injury.

While there is no dispute this hospitalization and in-patient care was not authorized by defendants, I find it was required due to a suicide attempt, which constitutes an emergency for which there was no time to contact defendant-employer for authorization for treatment. I further find the care received during the hospitalization and in-patient care was reasonable and beneficial given that claimant reported he was feeling better and no longer having suicidal ideations upon his discharge. (See Jt. Ex. 7, p. 6)

I turn now to the remaining medical charges claimed by claimant (Dan Tzuang, M.D.; Superior Medical Group; Pain Management Associates; Martin Backman, M.D.; Memorial – Orange Coast Imagining). (Cl. Ex. 7, pp. 3-4) As noted by the deputy commissioner, on July 1, 2015, claimant was reevaluated by Chad Abernathy, M.D. (Jt. Ex. 3, p. 3) Dr. Abernathy released claimant to return to regular activity and instructed claimant to contact Dr. Abernathy's office with any future problems. (Jt. Ex. 3, p. 3) Dr. Abernathy also indicated that the tremor claimant was experiencing in his arms was unrelated to his cervical injury. (Jt. Ex. 3, p. 3)

In a letter to defendants' counsel dated July 17, 2015, Dr. Abernathy stated he did not anticipate any further medical management for claimant's work injury. (Ex. B, p.1)

On July 7, 2015, claimant's counsel requested authorization for treatment relating to claimant's ongoing headaches. (Cl. Ex. 8, p. 5) Relying on Dr. Abernathy's July 1, 2015, visit note, defendants refused to authorize such care. (Cl. Ex. 8, pp. 6-8) As of November 13, 2015, defendants had still not provided claimant with any neurological care. (Cl. Ex. 8, p. 10) I therefore find defendants disputed liability for claimant's ongoing complaints starting July 1, 2015.

I find all charges from Superior Medical Group, Pain Management Associates, Dr. Backman, and Memorial – Orange Coast Imaging were incurred after July 1, 2015. (Cl. Ex. 7, pp. 3-4) I also affirm the deputy commissioner's finding that the services provided by these providers constituted reasonable and necessary treatment for claimant's work injury.

I find the charges from Dr. Tzuang were incurred prior to July 1, 2015, and treatment with Dr. Tzuang was not authorized by defendants. However, based on claimant's testimony, I find claimant's treatment with Dr. Tzuang was reasonable and beneficial. (Hearing Transcript pp. 55-56)

CONCLUSIONS OF LAW

The issue is whether claimant is entitled to payment of the medical expenses identified in bold in Exhibit 7.

Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Iowa Code

section 85.27. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975). Upon their denial of liability, defendants lose the right to control the medical care sought by the claimant during the period of denial, and the claimant is free to choose his care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010). In other words, when liability is denied, defendants are precluded from asserting an authorization defense as to any future treatment during the period of denial. Id.

Even when defendants do not deny liability for the injury, claimant is entitled to reimbursement for any unauthorized care so long as he shows the care was reasonable and beneficial. To be beneficial, the medical care must provide a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. Id. at 206. The claimant has a significant burden to prove the care was reasonable and beneficial. Id. at 206.

Claimant is also entitled to reimbursement for unauthorized care obtained in an emergency if the employer or the employer's agent cannot be reached immediately. Iowa Code section 85.27(4).

Claimant is entitled to an order of reimbursement if claimant paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

I found the care arising out of claimant's suicide attempt (Ottumwa Regional Health Center; Covenant Clinic; Radiology Associates; and Apogee Medical Group) was due to an emergency for which there was no time to contact defendant-employer. Thus, I conclude claimant is entitled to reimbursement pursuant to Iowa Code section 85.27(4).

In the alternative, even if such care was not the result of an emergency, I found it was reasonable and beneficial, meaning claimant is entitled to reimbursement pursuant to the standard set out in Bell Bros.

I therefore affirm the deputy commissioner's determination that defendants are responsible for the charges incurred at Ottumwa Health Center, Radiology Associates, and Apogee Medical Group from January 2, 2015, through January 3, 2015, the costs of which totaled $28,140.46, $1,192.50 and $552.44 respectively. I also affirm the deputy commissioner's determination that defendants are responsible for charges incurred at Covenant Clinic from January 4, 2015, through January 6, 2015, the costs of which totaled $769.00.

Regarding the remaining unpaid care, I found the charges from Superior Medical Group, Pain Management Associates, Dr. Backman, and Memorial – Orange Coast

Imaging were incurred after defendants' denial of liability for claimant's ongoing complaints. (Cl. Ex. 7, pp. 3-4) Because I also affirmed the deputy commissioner's finding that the services provided by these providers constituted reasonable and necessary treatment of claimant's work injury, I also affirm the deputy commissioner's determination that defendants are responsible for the charges incurred with those providers during defendants' period of denial.

I therefore affirm the deputy commissioner's determination that defendants are responsible for charges incurred for services provided by Superior Medical Group from July 17, 2015, through November 23, 2015, the cost of which totaled $1,100.00; Dr. Backman's office and Orange Coast Imaging from August 21, 2015, through March 2, 2016, the cost of which totaled $2,000.00 and $16,601.00 respectively; and Dr. Pouradib from November 16, 2015, through December 18, 2015, the cost of which totaled $5,115.00.

I found the charges from Dr. Tzuang occurred prior to defendants' denial of liability. However, I also found this care was reasonable and beneficial, meaning claimant is entitled to reimbursement pursuant to the standard set out in Bell Bros. I therefore affirm the deputy commissioner's determination that defendants are responsible for charges incurred for services of Dr. Tzuang from January 20, 2015, through June 16, 2015, the cost of which totaled $850.00.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 27, 2017, is affirmed in its entirety with my additional analysis.

Defendants shall pay claimant permanent total disability benefits at the stipulated weekly rate of one thousand seventy-five and 96/100 dollars ($1,075.96) from December 22, 2012. Credit shall be given for the times claimant was paid permanent disability benefits as stipulated in the hearing report.

Defendants shall pay the medical expenses identified in Exhibit 7 that remain unpaid. Defendants shall reimburse claimant for his out-of-pocket medical expenses and shall hold claimant harmless from the remainder of those expenses.

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, defendants shall pay claimant's costs of the arbitration proceeding, 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 9th day of November, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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