

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMAL HASSAN,

Claimant,

vs.

RESIDENTIAL ALTERNATIVES IA/IL,
d/b/a WINDMILL MANOR,

Employer,

and

ARGENT,

Insurance Carrier,
Defendants.

FILED

MAR 8 2016

WORKERS' COMPENSATION

File No. 5040067

A P P E A L

D E C I S I O N

Head Note Nos.: 1402.30; 2502

Claimant Amal Hassan appeals from a remand decision filed on September 19, 2014. Defendants, Residential Alternatives IA/IL, d/b/a Windmill Manor, employer, and its insurer, Argent, cross-appeal.

The litigation history of this matter is as follows:

The case was heard on April 16, 2013, and it was considered fully submitted on May 7, 2013, in front of the deputy workers' compensation commissioner. The arbitration decision was filed on September 9, 2013. That decision found claimant failed to carry her burden of proof that she sustained an injury arising out of and in the course of her employment with defendant-employer because of confusion and inconsistency in the record regarding claimant's alleged date of injury.

The arbitration decision was appealed. In the appeal decision, then-Commissioner Christopher Godfrey remanded this matter back to the deputy commissioner for consideration of whether claimant had proven, by a preponderance of the evidence, that she sustained a work injury due to the alleged incident on April 8, 2011, which arose out of and in the course of her employment. The deputy commissioner was also required to make determinations regarding other issues raised by the parties in this matter.

Applications for rehearing and reconsideration were filed. After those motions were denied by the commissioner, this matter was returned to the deputy commissioner for remand on July 28, 2014.

In the remand decision filed on September 19, 2014, the deputy commissioner found that while claimant proved by a preponderance of the evidence that she sustained a work-related injury on April 8, 2011, claimant failed to carry her burden of proof that she sustained either temporary disability or permanent disability as a result of that work injury. The deputy commissioner also found claimant failed to prove entitlement to reimbursement under Iowa Code section 85.39 for the independent medical evaluation (IME) performed by Sunil Bansal, M.D. The deputy commissioner also taxed claimant's costs to defendants.

On October 2, 2014, defendants filed an application for rehearing of remand decision asserting that the deputy commissioner erred in finding claimant sustained a work-related injury on April 8, 2011, and asserting the deputy commissioner erred in taxing claimant's costs to defendants. On October 21, 2014, the deputy commissioner filed his ruling on application for rehearing in which defendant's application was denied in its entirety. Claimant filed her notice of appeal of remand decision on October 2, 2014. Defendants filed their notice of cross-appeal on October 29, 2014.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained permanent disability as a result of the work-related injury of April 8, 2011. Claimant also asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement for Dr. Bansal's IME fee.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant sustained a work-related injury and that it occurred on April 8, 2011. Defendants assert that the deputy commissioner's finding that claimant failed to prove permanent disability resulting from the alleged work-related injury should be affirmed. Defendants assert the deputy commissioner's finding that claimant is not entitled to reimbursement for Dr. Bansal's IME fee should be affirmed. Defendants also assert the deputy commissioner erred in taxing claimant's costs to defendants.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner in the remand decision.

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed remand decision filed on September 19, 2014, which relate to issues properly raised on intra-agency appeal with the following analysis:

The deputy commissioner provided sufficient analysis of all of the issues raised in the remand proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to all of those issues. I affirm the deputy commissioner's finding that claimant proved by a preponderance of the evidence that she sustained a work-related injury on April 8, 2011. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained temporary or permanent disability as a result of the work-related injury of April 8, 2011. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement for Dr. Bansal's IME fee. I affirm the deputy commissioner's order taxing claimant's costs to defendants. I affirm and adopt the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

ORDER

IT IS THEREFORE ORDERED that the remand decision of September 19, 2014, is AFFIRMED in its entirety.

Claimant shall take nothing from these proceedings in the way of benefits.

Defendants shall file subsequent reports of injury as required under 876 IAC 3.1(2).

Pursuant to rule 876 IAC 4.33, defendants shall pay the costs of the arbitration proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 8th day of March, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Mr. Daniel D Bernstein
Attorney at Law
103 E College St., Ste 209
Iowa City, IA 52240
dbernstein152@yahoo.com

Mr. David L. Jenkins
Attorney at Law
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-2727
jenkins.david@bradshawlaw.com