

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSA AWAN,
Claimant,

vs.

JBS USA,
Employer,

and

AMERICAN ZURICH INSURANCE CO.,
Insurance Carriers,
Defendants.

FILED

SEP - 6 2017

WORKERS' COMPENSATION

File No. 5047800

A P P E A L

D E C I S I O N

Head Note Nos: 1108.50; 1402.40;
1402.60; 1801; 1803; 5-9998

Claimant Rosa Awan appeals from an arbitration decision filed on March 23, 2016. Defendants JBS USA, employer, and its insurer, American Zurich Insurance Co., respond to the appeal. The case was heard in two sessions on October 1, 2015, and on November 25, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 30, 2015.

The deputy commissioner found claimant failed to carry her burden of proof that she sustained permanent disability as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on October 29, 2012. The deputy commissioner found the work incident caused claimant to sustain only a temporary injury. The deputy commissioner found claimant is entitled to nothing in the way of permanent disability benefits. The deputy commissioner found claimant reached maximum medical improvement (MMI) for the work injury on January 14, 2013. The deputy commissioner found claimant is not entitled to additional requested temporary total disability (TTD) benefits from May 19, 2013, through September 17, 2013. The deputy commissioner found claimant is not entitled to payment by defendants for charges for past medical treatment itemized in Exhibit 16, for treatment received by claimant after January 14, 2013, and the deputy commissioner found all medical charges incurred after January 14, 2013, are claimant's responsibility. The deputy commissioner ordered the parties to bear their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained any permanent disability as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to award industrial disability benefits or, in the alternative, in failing to award odd-lot permanent total disability benefits for the work injury. Claimant asserts the deputy commissioner erred in finding claimant reached MMI for the work injury on January 14, 2013, and in failing to award additional TTD benefits from May 19, 2013, through September 17, 2013. Claimant asserts the deputy commissioner erred in failing to find claimant is entitled to payment by defendants of charges for past medical treatment itemized in Exhibit 16, for treatment received by claimant after January 14, 2013, and in finding all medical charges incurred after January 14, 2013, are claimant's responsibility. Claimant asserts the deputy commissioner erred in failing to tax defendants with claimant's costs of the arbitration proceeding itemized in Exhibit 17.

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.

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.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on March 23, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained permanent disability as a result of the October 29, 2012, work injury. I affirm the deputy commissioner's finding that the work injury incident caused claimant to sustain only a temporary injury. I affirm the deputy commissioner's finding that claimant is not entitled to either industrial disability or odd-lot permanent total disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant reached MMI for the work injury on January 14, 2013. I affirm the deputy commissioner's finding that claimant is not entitled to TTD benefits from May 19, 2013, through September 17, 2013. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for charges for past medical treatment itemized in Exhibit 16, for treatment received by claimant after January 14, 2013, and I affirm the deputy commissioner's finding that all medical charges incurred by claimant after January 14, 2013, are claimant's responsibility. I affirm the deputy commissioner's finding that claimant is not entitled to taxation against defendants of claimant's costs of the arbitration proceeding itemized in Exhibit 17, with the exception that defendants shall pay the charge for Dr. Bansal's

independent medical evaluation (IME) which defendants stipulated in the hearing report they would pay. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 23, 2016, is affirmed in its entirety

Claimant shall take nothing further from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall bear their own costs of the arbitration proceeding, with the exception that defendants shall pay the charge for Dr. Bansal's IME, which defendants stipulated in the hearing report they would pay, 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 this 6th day of September, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

John T. Hemminger
Attorney at Law
2454 SW 9th St
Des Moines, IA 50315-1904
johnhemminger@hemmingerlaw.com

Kent M. Smith
Attorney at Law
1225 Jordan Creek Pkwy., Ste. 108
West Des Moines, IA 50266-0036
ksmith@scheldruplaw.com