

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA LEVY,

Claimant,

vs.

Q HEALTH, LLC, D/B/A COMFORT
KEEPERS,

Employer,

and

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH,

Insurance Carrier;

and

SECOND INJURY FUND OF IOWA,

Defendants.

File Nos. 1641868.01
1641454.01A P P E A L
D E C I S I O NHead Notes: 1402.30, 1402.40; 1801; 1803
2501; 2502; 2907; 3200;
5-9999

Claimant Rebecca Levy appeals from an arbitration decision filed on March 9, 2021. Defendants Q Health, LLC, d/b/a Comfort Keepers, employer, and its insurer, National Union Fire Insurance Company of Pittsburgh, along with defendant Second Injury Fund of Iowa (hereinafter "the Fund"), respond to the appeal. The case was heard on October 1, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 29, 2020.

In the arbitration decision, the deputy commissioner found claimant failed to satisfy her burden of proof to establish she sustained an injury that arose out of and in the course of her employment on November 30, 2017, as alleged in File No. 1641868.01. The deputy commissioner also found claimant failed to satisfy her burden of proof to establish she sustained an injury that arose out of and in the course of her employment on December 1, 2017, as alleged in File No. 1641454.01. Because the deputy commissioner found claimant failed to prove she sustained a work-related injury on either of the alleged dates of injury, the deputy commissioner found claimant failed to prove entitlement to receive temporary disability benefits, permanent disability benefits, or medical benefits from defendants employer and insurer, and the deputy commissioner also found claimant is not entitled to receive benefits from the Fund. The

deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants employer and insurer for the charge for claimant's independent medical examination (IME), and the deputy commissioner found that pursuant to rule 876 IAC 4.33, claimant is not entitled to receive reimbursement from defendants employer and insurer for the charge for claimant's IME report as a cost.

On appeal, claimant asserts the deputy commissioner erred in finding she did not sustain any work-related injuries. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive temporary and permanent disability benefits and reimbursement for her medical expenses from defendants employer and insurer. Claimant likewise asserts the deputy commissioner erred in finding claimant is not entitled to receive benefits from the Fund. Claimant asserts the deputy commissioner erred by not ordering defendants to reimburse her for her IME or for her IME report.

Defendants employer and insurer and the Fund assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and 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 9, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant failed to prove she sustained injuries arising out of and in the course of her employment on either November 30, 2017, or on December 1, 2017, as alleged. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to receive temporary disability benefits, permanent disability benefits, or medical benefits from defendants employer and insurer, and I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues without further analysis. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement for her IME under Iowa Code section 85.39, or for the IME report as a cost, with the following brief additional analysis:

Per the Iowa Legislature's 2017 amendments to Iowa Code chapter 85, "[a]n employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to [Iowa Code section 85.39] if the injury for which the employee is being examined is determined to be compensable." Iowa Code section 85.39(2) (post-July 1, 2017) Having affirmed the deputy commissioner's finding that claimant did not sustain compensable injuries on either of the dates alleged, I find claimant is not entitled to reimbursement for her IME under Iowa Code section 85.39. With this brief additional analysis, I affirm the deputy commissioner's finding in that regard.

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Given the shortcomings of claimant's IME report, and given claimant's failure to prevail on any issue raised in this matter, I affirm the deputy commissioner's refusal to tax defendants with the charge for claimant's IME report as a cost.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed in this matter on March 9, 2021, is affirmed in its entirety with the above-stated additional analysis.

For File No. 1641868.01 (date of injury November 30, 2017), and for File No. 1641454.01 (date of injury December 1, 2017), claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, 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 employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 9th day of August, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Erin Tucker (via WCES)
Aaron Oliver (via WCES)
Amanda Rutherford (via WCES)