

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAWRENCE ECHOLS,

Claimant,

vs.

ELITE STAFFING, INC. and JACOBSON
STAFFING CO.,

Employer,

And

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

MAR 26 2018

File No. 5047498

WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note Nos. 1108; 1803; 1804;
2500; 3000

Defendants Elite Staffing, Inc. and Jacobson Staffing, Co., and Ace American Insurance Company, insurer, appeal from an arbitration decision filed on September 21, 2016. Claimant Lawrence Echols urges a full affirmation of the decision.

The case was heard on May 7, 2015, and considered fully submitted on August 19, 2015, after the filing of post-hearing briefs. Defendants timely filed their notice of appeal on September 27, 2016.

The matter was then delegated to the undersigned for a final agency decision.

The deputy commissioner found claimant carried his burden of proof that he sustained an aggravation of a pre-existing low back condition and that the aggravation led to a permanent and total disability, commencing from the date of the injury. Because the deputy commissioner found that there was a compensable injury, the medical bills from Primary Health Care and Accelerated Rehabilitation were compensable as well as the mileage. Claimant was further entitled to future medical care for the low back and hip. Using a combination of testimony and tax returns, the deputy commissioner found claimant was single and entitled to two exemptions with weekly earnings of \$450.00 for a benefit rate of \$298.20.

The deputy commissioner rejected the mental injury claim and did not award medical bills or future medical treatment related to the mental injury.

Defendants argue that the hearing deputy erred in finding that claimant suffered an aggravation to pre-existing low back conditions arising out of and in the course of his employment with defendant employer. Further, defendants argue that claimant's medical expenses are not related to a work injury and that he is not entitled to a permanent disability award or an order of alternate medical care.

Defendants accepted the rate determination.

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.

The thrust of defendants' appeal was that claimant was not a credible or reliable witness. They point to the discrepancies in claimant's testimony in how the work injury occurred. Further, they argue that the claimant's long history of back pain is a more reasonable explanation for his current ailments rather than a fall down the stairs at work.

The deputy addressed the credibility argument, arguing that in order to adopt the defendants' position, the deputy would need to find the claimant had deliberately presented a false claim to the agency. The deputy made a specific finding regarding demeanor, "Moreover, having witnessed the claimant testify live, I believe he was trying to be honest." (Arbitration Decision, page 13)

Demeanor determinations and "any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses" are given deference. Section 17A.19(10)(f)(3).

From a de novo review of the hearing transcript and the written evidence, the claimant was not evasive nor was there any documentation that he acted improperly during the hearing. He did not hide his past back complaints and injuries when presenting to various medical providers, nor did he dodge those questions at hearing. For instance, the defense counsel and the claimant had the following exchange.

Q. Do you recall telling the folks at Broadlawns in March of 2013 that you had had chronic back pain since 1980 as a result of a bulging disk?

A. From a ruptured lumbar disk?

Q. Yes.

A. I've always had problems with my back, but I don't let it stop me because I got to take care of my family.

(Transcript p. 78)

Again, he was asked about past medical issues and he replied as follows:

Q – in the form there was a question about how long you've had neck, mid-back, low back, buttock or hip or down-the-leg pain. Do you see that?

A. Un-huh.

Q. And you put fourteen years for each of those; is that right?

A. Okay. Yeah.

Q. So at that point you were acknowledging that you'd had pain in the neck, mid-back, low back, buttock, or hip and down the leg for fourteen years; right?

A. Yea, I said I've always had pain. But I had to overcome it because I had to work and take care of my family.

(Tr., p. 89)

In his medical visit to Dr. Lynn Nelson, M.D., an orthopaedic specialist selected by the defendants, claimant explained he had pain "going on for approximately 14 years." (Defendant's Ex. F:60)

While there were inconsistencies between how he first described the incident and how he described it in subsequent utterances, the undisputed facts are that claimant slipped and fell down a number of steps. The claimant and his co-worker both testified that he struck his back which is the type of injury that is likely to occur falling down a flight of stairs.

There are two competing expert opinions in this case. One is from Daniel Miller, D.O., an occupational medical doctor who is a fellow in the American Academy of Family Physicians and a Certified Medical Review Officer. (Defendants' Ex. G:90a) The other is from Robin Sassman, M.D., a Board Certified specialist in Occupational and Environmental Medicine doctor who is also certified as an Independent Medical Examiner by the American Board of Independent Medical Examiners. (Claimant's Ex. 2:1)

Dr. Miller agreed that claimant was suffering from back pain when he was examined in April 2015. (Def Ex. G:88) However, Dr. Miller believed that the back pain

arose from claimant's degenerative condition in part because claimant had a history of "severe back pain since 2010."

The medical records do not support Dr. Miller's conclusion. Instead, claimant's back pain waxed and waned for several years but did not prohibit the claimant from working. Despite claimant's checkered past, he tried to obtain regular employment, often calling frequently and asking for second chances. (See Transcript pp. 75-76, 80-81)

Because Dr. Miller relied on somewhat erroneous information, the more reliable opinion was that of Dr. Sassman.

I affirm the deputy commissioner's finding that the claimant carried his burden of proof regarding causation and compensability as well as the finding of permanent and total disability, the order for medical expenses and future treatment.

ORDER

THEREFORE, IT IS ORDERED that the arbitration decision filed September 21, 2016, is affirmed in its entirety.

Signed and filed this 26th day of March, 2018.



JENNIFER GERRISH-LAMPE
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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