

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELISSA CHRISTIANS,

Claimant,

vs.

MERCY HOSPITAL IOWA CITY,

Employer,

and

NATIONAL UNION FIRE  
INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 5034688

APPEAL  
DECISION

Head Note Nos: 1108; 1803

**FILED**

**AUG 30 2017**

**WORKERS' COMPENSATION**

Defendants Mercy Hospital Iowa City, employer, and its insurer, National Union Fire Insurance Company, appeal from an arbitration decision filed on January 22, 2016. Claimant Melissa Christians cross-appeals. The case was heard on November 16, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 18, 2015.

The deputy commissioner found the stipulated injury to claimant's low back, which arose out of and in the course of claimant's employment with defendant-employer on February 7, 2010, caused claimant to sustain 50 percent industrial disability, which entitles claimant to 250 weeks of permanent partial disability (PPD) benefits commencing on June 6, 2011. The deputy commissioner found claimant failed to carry her burden of proof that she is entitled to permanent total disability (PTD) benefits. The deputy commissioner found claimant is entitled to received additional healing period benefits for the following dates: March 19, 2013, through March 27, 2013; from April 24, 2013, through June 5, 2013, and from March 25, 2014, through August 30, 2015. The deputy commissioner found claimant's gross average weekly earnings for the work injury are \$1,104.00. The deputy commissioner found claimant's correct weekly benefit rate, using the classification of married with five exemptions, is \$724.54. The deputy commissioner found the work injury temporarily aggravated claimant's pre-existing depression and anxiety, but did not permanently aggravate those conditions. The deputy commissioner found claimant is entitled to payment by defendants of medical charges set out in Exhibits 26 and 27 for treatment of the temporary aggravation of claimant's depression and anxiety. The deputy commissioner excluded from evidence

disputed defendants' Exhibits J, K, L, N, O, P and Q. The deputy commissioner excluded from evidence disputed claimant's Exhibits 28 and 41. The deputy commissioner admitted into evidence disputed claimant's Exhibit 25. The deputy commissioner ordered defendants to pay claimant's requested costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in awarding claimant 50 percent industrial disability. Defendants assert the award of industrial disability should be significantly less than 50 percent. Defendants assert the deputy commissioner erred in awarding claimant additional healing period benefits for the following dates: March 19, 2013, through March 27, 2013; from April 24, 2013, through June 5, 2013, and from March 25, 2014, through August 30, 2015. Defendants assert the deputy commissioner erred in finding claimant's gross average weekly earnings for the work injury are \$1,104.00, and in finding claimant's correct weekly benefit rate for the work injury is \$724.54. Defendants assert the deputy commissioner erred in finding the work injury caused an aggravation of claimant's pre-existing depression and anxiety and in finding claimant is entitled to payment by defendants of medical charges set out in Exhibits 26 and 27 for treatment of claimant's depression and anxiety. Defendants assert the deputy commissioner erred in excluding from evidence disputed defendants' Exhibits J, K, L, N, O, P and Q. Defendants assert the deputy commissioner erred in excluding from evidence disputed claimant's Exhibits 28 and 41. Defendants assert the deputy commissioner erred in admitting into evidence disputed claimant's Exhibit 25. Defendants assert the deputy commissioner failed to properly assess claimant's credibility or any alleged lack thereof. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's requested costs of the arbitration proceeding.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to award PTD benefits.

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 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on January 22, 2016, which relate to issues properly raised on intra-agency appeal.

I affirm the deputy commissioner's finding that the work injury caused claimant to sustain 50 percent industrial disability, which entitles claimant to 250 weeks of PPD benefits commencing on June 6, 2011. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she is entitled to PTD benefits. I affirm the deputy commissioner's finding that claimant is entitled to received additional healing period benefits for the following dates: March 19, 2013, through March 27, 2013; from April 24, 2013, through June 5, 2013, and from March 25, 2014, through August 30, 2015. I affirm the deputy commissioner's finding that claimant's gross average weekly earnings for the work injury are \$1,104.00. I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate, using the classification of married with five exemptions, is \$724.54. I affirm the deputy commissioner's finding that the work injury temporarily aggravated claimant's pre-existing depression and anxiety, but did not permanently aggravate those conditions. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of medical charges set out in Exhibits 26 and 27 for treatment of the temporary aggravation of claimant's depression and anxiety. I affirm the deputy commissioner's finding that disputed defendants' Exhibits J, K, L, N, O, P and Q should be excluded from evidence. I affirm the deputy commissioner's finding that disputed claimant's Exhibits 28 and 41 should be excluded from evidence. I affirm the deputy commissioner's finding that disputed claimant's Exhibit 25 should be admitted into evidence. I also affirm the deputy commissioner's order that defendants pay claimant's requested costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 22, 2016, is affirmed in its entirety.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at a rate of seven hundred twenty-four and 54/100 dollars (\$724.54) per week from June 6, 2011.

Defendants shall pay claimant additional healing period benefits at the rate of seven hundred twenty-four and 54/100 dollars (\$724.54) per week for the following

dates: March 19, 2013, through March 27, 2013; April 24, 2013, through June 5, 2013; and March 25, 2014, through August 30, 2015.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall receive credit for all weekly benefits previously paid.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's requested costs of the arbitration proceeding as set forth in the arbitration decision, and the parties shall split 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 30<sup>th</sup> day of August, 2017.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies To:

Paul J. McAndrew  
Attorney at Law  
2771 Oakdale Blvd., Ste. 6  
Coralville, IA 52241-2781  
[paulm@paulmcandrew.com](mailto:paulm@paulmcandrew.com)

Aaron T. Oliver  
Attorney at Law  
5<sup>th</sup> Fl. U.S. Bank Bldg.  
520 Walnut St.  
Des Moines, IA 50309-4119  
[aoliver@hmrlawfirm.com](mailto:aoliver@hmrlawfirm.com)