

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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CANDACE STEVENS,	:		<b>FILED</b>
	:		<b>MAR 14 2018</b>
Claimant,	:	File No. 5049776	<b>WORKERS' COMPENSATION</b>
vs.	:		
	:		<b>A P P E A L</b>
EASTERN STAR MASONIC HOME,	:		
	:		<b>D E C I S I O N</b>
Employer,	:		
	:		
IOWA LONG TERM CARE RISK MANAGEMENT ASSOCIATION,	:	Head Note Nos: 1802; 1803; 1803.1; 2701; 2907, 3001; 5-9998	
	:		
Insurance Carrier, Defendants.	:		

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Defendants Eastern Star Masonic Home, employer, and its insurer, Iowa Long Term Care Risk Management Association, appeal from an arbitration decision filed on August 2, 2016. Claimant Candace Stevens cross-appeals. The case was heard on April 11, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 11, 2016.

The deputy commissioner found claimant carried her burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on March 23, 2013, caused claimant to sustain permanent injuries to her right upper extremity, to her right shoulder, and it caused claimant to develop complex regional pain syndrome (CRPS). The deputy commissioner found claimant is entitled to receive intermittent periods of healing period benefits and intermittent periods of temporary partial disability benefits from March 24, 2013, through March 4, 2016. The deputy commissioner found claimant sustained 60 percent industrial disability as a result of the work injury, which entitles claimant to receive 300 weeks of permanent partial disability (PPD) benefits commencing on April 27, 2013. The deputy commissioner found claimant's gross average weekly wage for the work injury is \$290.71, and the deputy commissioner found claimant's benefit rate for the work injury, classification single with one exemption, is \$199.27 per week. The deputy commissioner found defendants are entitled to a credit for all weekly benefits paid to date, including any potential over-payment of temporary disability benefits. The deputy commissioner found claimant is entitled to alternate medical care for her right shoulder condition and the deputy commissioner ordered defendants to authorize a treating physician for claimant's right shoulder. The deputy commissioner found that pursuant to Iowa Code section 85.39 claimant is entitled to receive reimbursement from defendants

for the cost of the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on March 4, 2016. The deputy commissioner found claimant is not entitled to reimbursement from defendants for the cost of the vocational assessment report of Carma Mitchell, M.S., dated March 11, 2016. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$311.31.

Defendants assert the deputy commissioner erred in finding claimant carried her burden of proof that the work injury caused claimant to sustain permanent injuries to her right shoulder, and in finding the work injury caused claimant to develop CRPS. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive any temporary disability benefits after November 21, 2014. Defendants assert the deputy commissioner erred in finding claimant sustained 60 percent industrial disability as a result of the work injury. Defendants assert the deputy commissioner erred in failing to find claimant's permanent disability resulting from the work injury is confined to claimant's right upper extremity and in failing to find claimant is entitled to receive only scheduled member permanent disability for claimant's right upper extremity injury. In the alternative, defendants assert that if it is found on appeal that claimant is entitled to receive industrial disability, the award for industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive alternate medical care for her right shoulder condition and in ordering defendants to authorize a treating physician to care for claimant's right shoulder.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to find claimant is entitled to receive permanent total disability benefits. Claimant also asserts the deputy commissioner erred in finding claimant is not entitled to receive reimbursement for the cost of Ms. Mitchell's vocational assessment report.

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 August 2, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant carried her burden of proof that the work injury caused claimant to sustain permanent injuries to her right upper extremity, to her right shoulder, and in finding the work injury caused claimant to develop CRPS. I affirm the deputy commissioner's finding that claimant is entitled to receive intermittent periods of healing period benefits

and intermittent periods of temporary partial disability benefits from March 24, 2013, through March 4, 2016. I affirm the deputy commissioner's finding that claimant sustained 60 percent industrial disability as a result of the work injury, which entitles claimant to receive 300 weeks of PPD benefits. I affirm the deputy commissioner's finding that claimant is not entitled to receive permanent total disability benefits. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the work injury is \$290.71, and I affirm the deputy commissioner's finding that claimant's benefit rate for the work injury is \$199.27 per week. I affirm the deputy commissioner's finding that defendants are entitled to a credit for all weekly benefits paid to date, including any potential over-payment of temporary disability benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care for her right shoulder condition and I affirm the deputy commissioner's order that defendants authorize a treating physician for claimant's right shoulder. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendants for the cost of Ms. Mitchell's vocational assessment report. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$311.31. 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. The deputy commissioner found claimant to be credible. Defendants assert claimant was not credible. 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 August 2, 2016, is affirmed in its entirety.

Defendants shall pay claimant intermittent healing period benefits and intermittent temporary partial disability benefits from March 24, 2013, through March 4, 2016, as detailed in the arbitration decision.

Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits commencing on April 27, 2013.

All healing period and permanent partial disability benefits shall be paid at the rate of one hundred ninety-nine and 27/100 dollars (\$199.27) per week.

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

Defendants shall be entitled to a credit for all weekly benefits paid to date, including any potential overpayment of temporary disability benefits. If the parties cannot agree on the amount of the credit, counsel shall file a request for rehearing with the deputy commissioner who heard this case and each party will be required to outline the claimed credit.

Defendants shall authorize a treating physician to provide care for claimant's right shoulder into the future should additional medical treatment be required and desired by claimant.

Defendants shall reimburse claimant for the cost of Dr. Bansal's IME, as well as forty-three and 87/100 dollars (\$43.87) for claimant's mileage to and from that examination.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of three hundred eleven and 31/100 dollars (\$311.31), 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 on this 14<sup>th</sup> day of March, 2018.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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