



Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision, filed on February 21, 2019, and the ruling on claimant's request for rehearing, filed on March 5, 2019, that 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 carried her burden of proof to establish a physical change in condition after the arbitration decision filed on August 5, 2014. In doing so, I affirm the deputy commissioner's acknowledgement of the competing factors, and the factors presented by defendants. However, I affirm the deputy commissioner's finding that after the arbitration decision, claimant developed left leg symptoms, required implantation of a spinal cord stimulator, and requires the use of narcotic medications to control her symptoms. As a result, I affirm the deputy commissioner's finding that claimant proved an increase of ten percent in her industrial disability after the arbitration decision.

I affirm the deputy commissioner's finding that claimant failed to prove entitlement to reimbursement for her IME under Iowa Code section 85.39. I affirm the deputy commissioner's decision to tax the costs of claimant's filing fee and FCE report to defendants. I affirm the deputy commissioner's decision to decline to tax the costs of claimant's vocational report.

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

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above issues.

#### ORDER

IT IS THEREFORE ORDERED that the review-reopening decision, filed on February 21, 2019, and the ruling on claimant's request for rehearing, filed on March 5, 2019, are affirmed in their entirety.

Defendants shall pay claimant an additional fifty (50) weeks of permanent partial disability benefits commencing on December 2, 2015.

All weekly benefits shall be paid at the stipulated weekly rate of three hundred twenty-six and 45/100 dollars (\$326.45).

The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall receive credit for all benefits paid to date.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of four hundred fifty and no/100 dollars (\$450.00), 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 9<sup>th</sup> day of April, 2020.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Mark J. Sullivan           Via WCES

Chris J. Scheldrup       Via WCES