

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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 MARIA TELLEZ,

Claimant,

vs.

AMITY FELLOWSERVE – IOWA, INC.,

Employer,

and

ARGENT/WEST BEND MUTUAL  
INSURANCE COMPANY,Insurance Carrier,  
Defendants.

File Nos. 1661847.01 and 19001291.01

## A P P E A L

## D E C I S I O N

Head Notes: 1402.20; 1402.40; 1403.10;  
1803; 2501; 2502; 2907;  
5-9998

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Defendants Amity Fellowserve-Iowa, Inc., employer, and its insurer, Argent/West Bend Mutual Insurance Company, appeal from an arbitration decision filed on July 20, 2022, and from a ruling on application for rehearing filed on August 25, 2022. Claimant Maria Tellez cross-appeals. The case was heard on April 8, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 29, 2022.

In the arbitration decision, the deputy commissioner found claimant was a credible witness. In File No. 19001291.01, the deputy commissioner found claimant did not meet her burden of proof to establish she sustained permanent impairment of her right hip and right lower extremity caused by the stipulated February 21, 2019, work injury. In File No. 1661847.01, the deputy commissioner found claimant did meet her burden of proof to establish she sustained permanent impairment of her low back and her left hip caused by the stipulated February 6, 2019, work injury. The deputy commissioner found that because claimant's employment terminated with defendant-employer, claimant is entitled to industrial disability benefits, as opposed to functional disability benefits, and the deputy commissioner found claimant sustained 12 percent industrial disability, which entitles claimant to receive 60 weeks of permanent partial disability benefits at the weekly benefit rate of \$346.26, commencing on January 20, 2021. The deputy commissioner found defendants should reimburse claimant for her out-of-pocket medical expenses and medical mileage, and the deputy commissioner found defendants should reimburse all health care and/or insurance providers for all

medical treatment casually related to claimant's low back and left lower extremity injuries. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the independent medical examination (IME) of claimant performed by David Segal, M.D. The deputy commissioner found that under 876 Iowa Administrative Code 4.33, claimant is entitled to reimbursement from defendants for the cost of the filing fee, but not the cost of the deposition, and the deputy commissioner found defendants are responsible for the cost of the hearing transcript.

On appeal, defendants assert the deputy commissioner erred in finding claimant is a credible witness. Defendants assert the deputy commissioner erred in finding claimant proved she sustained permanent impairment of her low back and left hip as a result of the February 6, 2019, work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to industrial disability benefits as opposed to functional disability benefits, and defendants alternatively assert if claimant is entitled to industrial disability benefits, she is only entitled to an award of five percent industrial disability. Defendants assert the deputy commissioner erred in finding defendants are responsible for claimant's medical bills and medical mileage after November 2019. Defendants assert the remainder of the decision should be affirmed.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant failed to prove she sustained permanent impairment of her right hip and right lower extremity caused by the February 21, 2019, work injury. Claimant asserts the deputy commissioner erred in finding the opinion of Kenneth McMains, M.D., more persuasive than the opinion of Dr. Segal, and claimant asserts the award for industrial disability benefits should be increased substantially. Claimant asserts the remainder of the decision should be affirmed.

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

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 was a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable deference to the 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.

I 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on July 20, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 is a credible witness. I affirm the deputy commissioner's finding that claimant failed to prove she sustained permanent impairment of her right hip and her right lower extremity caused by the February 21, 2019, work injury in File Number 19001291.01. I affirm the deputy commissioner's finding that claimant did prove she sustained permanent impairment of her low back and her left hip caused by the stipulated February 6, 2019, work injury in File Number 1661847.01. I affirm the deputy commissioner's finding that because claimant's employment terminated with defendant-employer, claimant is entitled to receive industrial disability benefits, as opposed to functional disability benefits, and I affirm the finding that claimant sustained 12 percent industrial disability, which entitles claimant to receive 60 weeks of permanent partial disability benefits, commencing on January 20, 2021. I affirm the deputy commissioner's finding that defendants should reimburse claimant for her out-of-pocket medical expenses and medical mileage, and I affirm the deputy commissioner's finding that defendants should reimburse all health care and/or insurance providers for all medical treatment casually related to claimant's low back and left lower extremity injuries. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of Dr. Segal's IME. I affirm the deputy commissioner's finding that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants for the cost of the filing fee, but not the cost of the deposition, and I affirm the deputy commissioner's finding that defendants are responsible for the cost of the hearing transcript.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 20, 2022, is affirmed in its entirety.

**For File No. 19001291.01 – Injury Date of February 21, 2019:**

Claimant shall take nothing further.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

**For File No. 1661847.01 – Injury Date of February 6, 2019:**

Defendants shall pay claimant 60 weeks of permanent partial disability benefits, at the weekly benefit rate of three hundred forty-six and 26/100 dollars (\$346.26), commencing on January 20, 2021.

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants shall reimburse claimant for her out-of-pocket medical expenses and medical mileage, and defendants shall reimburse all health care and/or insurance providers for all medical treatment casually related to claimant's low back and left lower extremity injuries.

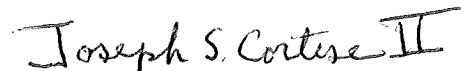
Defendants shall provide claimant with future medical care for all treatment causally related to the musculoskeletal strain to her low back and for her left-sided hip pain.

Pursuant to Iowa Code section 85.39, Defendants shall reimburse claimant for the cost of Dr. Segal's IME.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant for the cost of the filing fee, and defendants shall pay 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 11<sup>th</sup> day of January, 2023.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Benjamin Roth (via WCES)

Nathan McConkey (via WCES)