

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD WILLIAM BRINCK,

Claimant,

vs.

SIouxLAND MENTAL HEALTH
CENTER,

Employer,

and

THE CINCINNATI INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

MAR 16 2017

WORKERS' COMPENSATION

File No. 5038759

A P P E A L

D E C I S I O N

Head Note Nos: 2905, 5-9998

Claimant Ronald William Brinck appeals from a review-reopening decision filed on September 1, 2015. Defendants Siouxland Mental Health Center, employer, and its insurer, The Cincinnati Insurance Company, respond to the appeal. The case was heard on March 17, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 1, 2015.

The deputy commissioner found claimant is not entitled to review-reopening in this case because claimant failed to carry his burden of proof he is entitled to additional industrial disability benefits for his work-related injury which occurred on April 14, 2009, after his agreement for settlement for that injury was approved by the workers' compensation commissioner on November 27, 2012. The deputy commissioner found the mental conditions which formed the basis for claimant's review-reopening claim were fully known to claimant as of the date the agreement for settlement was approved and those conditions did not materially change after the agreement for settlement was approved. The deputy commissioner found claimant's review-reopening claim is barred by the doctrine of res judicata. In the agreement for settlement, the parties agreed claimant is entitled to 50 percent industrial disability for the work injury of April 14, 2009, which entitled claimant to 250 weeks of permanent partial disability (PPD) benefits, commencing on February 15, 2010. Based on the finding of no change of condition and also based on the doctrine of res judicata, the deputy commissioner awarded claimant nothing further in the review-reopening decision. The deputy commissioner also ordered claimant to pay the costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof he sustained a change of condition resulting in an increased loss of earning capacity after the agreement for settlement was approved, and claimant asserts the deputy commissioner erred in failing to award additional industrial disability on that basis. Claimant asserts the deputy commissioner erred in finding the doctrine of *res judicata* applies in this case to bar claimant from being awarded additional industrial disability benefits. Claimant also asserts the review-reopening decision should not be adopted as the final agency decision, but should be rewritten because the review-reopening decision does not comply with Iowa Code section 17A.16(1) or the *Burton* precedent or the *McSpadden* precedent. Claimant also asserts the deputy commissioner "based his decision on inappropriate considerations, so that a truly *de novo* review should be made of the record evidence." Claimant also asserts the deputy commissioner erred in ordering claimant to pay the costs of the review-reopening proceeding.

Defendants assert on appeal that the review-reopening decision should be affirmed in its entirety.

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

As is always the case, I have performed a truly *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.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on September 1, 2015, 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 review-reopening 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 not entitled to review-reopening in this matter. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof he is entitled to additional industrial disability benefits for his work-related injury which occurred on April 14, 2009, after his agreement for settlement for that injury was approved by the commissioner on November 27, 2012. I affirm the deputy commissioner's finding that the mental conditions which formed the basis for claimant's review-reopening claim were fully known to claimant as of the date the agreement for settlement was approved and those conditions did not materially change after the agreement for settlement was approved. I affirm the deputy commissioner's finding that claimant's review-reopening claim is barred by the doctrine of *res judicata*. I find the review-reopening decision does comply with Iowa Code section 17A.16(1) and the *Burton* and *McSpadden* precedents. I find claimant's contention that the deputy commissioner based the review-reopening decision on alleged "inappropriate considerations" to be entirely without merit and beyond the scope of the record in this

matter. I also affirm the deputy commissioner's order that claimant pay the costs of the review-reopening proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

Some of the findings by the deputy commissioner in the review-reopening 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 which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the review-reopening hearing.

ORDER

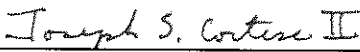
IT IS THEREFORE ORDERED that the review-reopening decision filed on September 1, 2015, is affirmed in its entirety.

Claimant shall take nothing further in this matter.

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the arbitration proceeding, and claimant 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 this 16th day of March, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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