

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARLA R. KERN,

Claimant,

vs.

FENCHEL DOSTER & BUCK, P.L.C.,

Employer,

and

PHARMACISTS MUTUAL
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5062419

A P P E A L
D E C I S I O N

Head Note Nos.: 1402.30; 1802; 1803;
2501; 2907; 4000.2

FILED

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WORKERS' COMPENSATION

Claimant Karla R. Kern appeals from an arbitration decision filed on December 18, 2017, and a ruling on claimant's rehearing application filed on January 8, 2018. Defendants Fenchel Doster & Buck, P.L.C., employer, and Pharmacists Mutual Insurance Company, insurer, respond to the appeal. The case was heard on August 17, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 21, 2017.

In the arbitration decision, the deputy commissioner found claimant's bilateral carpal tunnel, left thumb trigger finger, and left CMC joint arthritis all manifested on May 20, 2016. Relying on the opinion of Sunil Bansal, M.D., the deputy commissioner found these conditions were materially and substantially aggravated by claimant's work with defendant-employer. The deputy commissioner found claimant sustained a combined permanent impairment rating of eight percent of the whole person due to these conditions. In addition to permanency benefits, the deputy commissioner found claimant was entitled to healing period benefits from March 21, 2017, through April 19, 2017, but the deputy commissioner found defendants were entitled to credit for wages paid for the weeks ending March 24, 2017, and March 31, 2017. The deputy commissioner also found claimant did not establish entitlement to penalty benefits.

With respect to reimbursement and costs assessment issues, the deputy commissioner determined claimant's independent medical examination (IME) was not reimbursable under Iowa Code section 85.39. While the deputy commissioner taxed the costs of claimant's filing and service fees to defendants, the deputy commissioner declined to tax any amount of Dr. Bansal's fees to defendants because Dr. Bansal failed to itemize the cost of preparing or drafting his report.

On rehearing, claimant challenged the deputy commissioner's determinations with respect to defendants' credit for wages paid during claimant's healing period; the methodology utilized to calculate claimant's permanent partial disability; the reimbursement of claimant's IME under Iowa Code section 85.39; the taxation of Dr. Bansal's fees; and claimant's entitlement to penalty benefits. The deputy commissioner addressed each of these challenges in turn and ultimately denied claimant's rehearing application in its entirety.

On appeal, claimant again asserts the deputy commissioner erred in his award of credits to defendants for wages paid during claimant's healing period; in the calculation of claimant's permanent partial disability; in his denial of claimant's penalty claims; and in his refusal to order defendants to reimburse claimant's IME under Iowa Code section 85.39 or assess it as a cost.

Defendants assert on appeal that the arbitration decision and ruling on claimant's rehearing application should be affirmed in their entirety.

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

I have 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.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision, filed on December 18, 2017, and ruling on claimant's rehearing application, filed on January 8, 2018, 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 sustained a combined permanent impairment rating of eight percent of the whole person due to her work-related bilateral carpal tunnel, left thumb trigger finger, and left CMC joint arthritis. I affirm the deputy commissioner's finding that claimant is entitled to healing period benefits from March 21, 2017, through April 19, 2017, but defendants are entitled to credit for wages paid for the weeks ending March 24, 2017, and March 31, 2017. I affirm the deputy commissioner's finding that claimant did not establish her entitlement to penalty benefits. I affirm the deputy commissioner's finding that claimant's IME does not qualify for reimbursement under Iowa Code section 85.39. I affirm the deputy commissioner's decision to not tax any of Dr. Bansal's fees to defendants.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 18, 2017, and the ruling on claimant's rehearing application filed on January 8, 2018, are affirmed in their entirety.

All weekly benefits shall be paid at the rate of four hundred forty-eight and 54/100 dollars (\$448.54) per week.

Defendants shall pay claimant healing period benefits from March 21, 2017, through April 19, 2017.

Defendants shall be entitled to a credit against the healing period award for wages paid (\$431.44) for the week ending March 24, 2017, and for wages paid up to the amount of the weekly rate (\$448.54) for the week ending March 31, 2017.

Defendants are not entitled to a credit for any excess wages paid above the weekly rate for either of the aforementioned weeks.

Defendants shall pay claimant forty (40) weeks of permanent partial disability benefits commencing on April 20, 2017.

Defendants 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 reimburse claimant for any past medical expenses paid directly by claimant to medical providers, defendants shall either pay to claimant or directly to the medical providers any outstanding past medical expenses, and defendants shall hold claimant harmless for any medical expenses outlined in the Joint Medical Exhibit pages 52 through 60 and pages 63 through 71.

Claimant shall be entitled to future, causally related medical treatment for the work injury pursuant to Iowa Code section 85.27.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred fifteen and 14/100 dollars (\$115.14), and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 2nd day of July, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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