

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN SCHMITT,

Claimant,

vs.

FLYNN READY MIX CONCRETE CO.,

Employer,

and

LIBERTY MUTUAL INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

MAR 30 2016

WORKERS' COMPENSATION

File No. 5039932

A P P E A L

D E C I S I O N

Head Note No.: 1803

Upon written delegation of authority by the workers' compensation commissioner under Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa workers' compensation commissioner.

On December 18, 2014, defendants, Flynn Ready Mix Concrete Co, employer and Liberty Mutual Insurance Company, insurance carrier, appeal from an arbitration decision filed on December 10, 2014. The case was heard on July 18, 2014.

The deputy commissioner found that claimant carried his burden of proof to show that he was permanently and totally disabled as a result of the December 1, 2009, work injury. The deputy commissioner also awarded claimant prior medical expenses, future medical treatment, and an assessment of costs against the defendants.

Defendants assert on appeal that the deputy incorrectly found that the December 1, 2009, work injury was the cause of permanent and total disability. Defendants further assert that the deputy incorrectly found claimant's testimony credible. Additionally, defendants contend that the deputy erred in awarding medical mileage, IME fee and FCE reimbursement, and alternate medical care. The defendants also argue that the deputy failed to consolidate this matter with agency file number 5041703. Claimant asserts that the arbitration decision should be affirmed.

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 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of December 10, 2014, filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional comments. I provide the following additional analysis:

Defendants argue that the hearing deputy failed to consider the consolidation of this matter with agency file number 5041703. Defendants contend agency file number 5041703 involves common questions of fact and law. Specifically, both cases concern the nature and extend of claimant's low back injury.

Administrative notice is taken of agency file number 5041703. In that file, Steven Schmitt filed a workers' compensation claim against employer, Express Services, and Insurance Company of the State of Pennsylvania, insurance carrier, for an alleged August 2, 2012, low back injury. However, the August 2, 2012, petition was not pending at the agency at the time of the arbitration hearing in this matter and therefore, could not have been consolidated with the present matter. Furthermore, on May 26, 2015, the August 2, 2012, date of injury was settled via a compromise settlement pursuant to Iowa Code section 85.35. The settlement of the August 2, 2012, date of injury (agency file number 5041703) was approved by this agency. An approved compromise settlement shall constitute a final bar to any further rights arising out of Iowa chapter 85. Therefore, defendants' argument regarding consolidation of agency file number 5041703 with the present matter is moot.

On appeal defendants also argue that the hearing deputy improperly found claimant was credible. 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 who presided at the hearing. The presiding deputy had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. The undersigned's ability to find the true facts that are affected by witness demeanor and credibility cannot be expected to be superior to that of the deputy who presided at the hearing. If anything, the undersigned's ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation. Therefore, I adopt the deputy commissioner's findings, conclusions and analysis regarding these issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of December 10, 2014, is affirmed.

Defendants shall bear the costs of the appeal.

Pursuant to a standing order of delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, the undersigned enters this ruling for the workers' compensation commissioner. There is no right of appeal of this ruling to the workers' compensation commissioner.

Signed and filed this 30th day of March, 2016.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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