

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RAWDA MOHAMED,

Claimant,

vs.

THE SHERATON, LLC,

Employer,

and

SOMPO/GALLAGHER BASSETT,

Insurance Carrier,
Defendants.

File No. 20700416.01

APPEAL DECISION

Head Note Nos.: 1402.40, 1801, 1802,
1803, 1804, 2500,
2700, 4100

Claimant Rawda Mohamed appeals from an arbitration decision filed on October 8, 2021. The case was heard on June 29, 2021, and considered fully submitted in front of the deputy workers' compensation commissioner on August 20, 2021.

On February 23, 2022, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

In the arbitration decision, the deputy commissioner found claimant was entitled to temporary disability or healing period benefits from August 24, 2020, to November 17, 2020, for the stipulated June 7, 2019, work injury. The deputy commissioner found claimant failed to meet her burden of proof the work injury was a cause of permanent disability and denied her request for alternate medical care. The deputy commissioner found claimant was entitled to recover the \$100.30 cost of the filing fee.

Claimant asserts on appeal that the deputy commissioner erred in finding she failed to prove the work injury is a cause of permanent disability. Claimant alleges the deputy commissioner erred in failing to find she was entitled to a running award of healing period benefits from August 24, 2020. In the alternative, claimant contends if she has reached maximum medical improvement, the deputy commissioner erred in failing to find she is permanently and totally disabled. Claimant asserts the deputy commissioner erred in denying her request for alternate medical care.

Defendants contend the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a 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. I find the deputy commissioner correctly assessed 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 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. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on October 8, 2021, is affirmed, as modified, with the following additional analysis.

I affirm the deputy commissioner's finding claimant failed to meet her burden of proof that she sustained a permanent disability as a result of the work injury. I affirm the deputy commissioner's finding claimant is not entitled to alternate medical care. I affirm the deputy commissioner's finding claimant is entitled to recover the cost of the \$100.30 filing fee.

Page 20 of the arbitration decision provides, in part, "Dr. Boarini eventually recommended a FCE. This was performed in November 2019." Based on my de novo review, the functional capacity evaluation occurred on November 17, 2020, not in November 2019. (Joint Exhibit 6, pages 98-108)

At page 19 of the arbitration decision, the deputy commissioner found claimant was entitled to temporary disability or healing period benefits from August 24, 2020, to November 17, 2020. In the order, the deputy commissioner ordered defendants to pay claimant healing period benefits from August 24, 2020, to November 17, 2020.

Iowa Code section 85.33 (2019) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-557.

Iowa Code section 85.33(1) governs temporary total disability benefits as follows:

[e]xcept as provided in subsection 2 of this section, the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Under Iowa Code section 85.33(6), "'employment substantially similar to the employment in which the employee was engaged at the time of the injury' includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed."

Claimant averred at hearing and avers on appeal she is entitled to a running award of temporary disability benefits from August 24, 2020. I affirm the deputy commissioner's finding claimant is entitled to temporary disability benefits from August 24, 2020, to November 17, 2020. The deputy commissioner characterized the temporary benefits as healing period benefits. Given claimant did not meet her burden of proof she sustained a permanent disability, the benefits are properly characterized as temporary total disability benefits, not healing period benefits.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 8, 2021, is affirmed, as modified.

Defendants shall pay claimant temporary total disability benefits from August 24, 2020, to November 17, 2020, at the stipulated weekly rate of three hundred thirty-three and 72/100 dollars (\$333.72).


Defendants shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

Claimant's request for alternate medical care is denied.

Defendants shall reimburse claimant one hundred and 30/100 dollars (\$100.30) for the cost of the filing fee.

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, 2022.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Samuel Aden (via WCES)

William Scherle (via WCES)