

It is noted by the undersigned that while the sixth paragraph of page 10 of the arbitration decision states:

It is found that claimant sustained an injury at work to her ankle and low back. She was treated and returned to baseline on January 23, 2014, with no permanent impairment.

It is clear that the date included in that passage contains a scrivener's error. It is entirely clear from reading the three paragraphs immediately preceding this passage that the deputy commissioner intended to state the date of January 23, 2015, not January 23, 2014. I find that the deputy commissioner's scrivener's error does not change the outcome of this case.

Claimant asserts on appeal that the deputy commissioner erred in finding the work incident which occurred on November 20, 2014, did not cause claimant to sustain permanent disability. Claimant asserts the deputy commissioner erred in finding claimant sustained temporary injuries only from the work incident which resolved completely by January 23, 2015. Claimant asserts that while defendant-employer had actual notice of the November 20, 2014, work incident when it occurred, the deputy commissioner erred in finding defendants proved claimant failed to provide timely notice within 90 days after the incident occurred that she sustained any injuries as a result of the incident, and claimant asserts the deputy commissioner erred in finding claimant's claim is therefore barred by Iowa Code section 85.23. Claimant asserts the deputy commissioner erred in finding all other issues raised in this matter are moot, including whether claimant is entitled to receive temporary disability benefits from July 14, 2015, through November 2, 2015, and then again from June 20, 2016, through August 12, 2016, whether claimant is entitled to receive permanent disability benefits and, if so, the extent, and whether claimant is entitled to payment and/or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 12. Claimant asserts the deputy commissioner erred in ordering the parties to pay their own costs of the arbitration proceeding. Claimant asserts the deputy commissioner erred in failing to find, pursuant to Iowa Code section 85.39, that claimant is entitled to receive reimbursement from defendants for the independent medical evaluation (IME) of claimant performed by Richard L. Kreiter, M.D., on February 8, 2017.

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

Having 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, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on October 10, 2017, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant's work incident which occurred on November 20, 2014, did not cause claimant to sustain permanent disability.

I affirm the deputy commissioner's finding that claimant sustained temporary injuries only from the work incident which resolved completely by January 23, 2015.

I affirm the deputy commissioner's finding that while defendant-employer had actual notice of the November 20, 2014, work incident when it occurred, claimant failed to provide timely notice within 90 days after the incident occurred that she sustained any injuries as a result of the incident, and I affirm the deputy commissioner finding that claimant's claim is therefore barred by Iowa Code section 85.23.

I affirm the deputy commissioner's finding that the other issues raised in this matter are moot, including whether claimant is entitled to receive temporary disability benefits from July 14, 2015, through November 2, 2015, and then again from June 20, 2016, through August 12, 2016, whether claimant is entitled to receive permanent disability benefits and, if so, the extent, and whether claimant is entitled to payment and/or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 12.

I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding, with the exception that I reverse the deputy commissioner's finding that claimant is not entitled to receive reimbursement for the cost of Dr. Kreiter's IME. I provide the following analysis for this finding:

Pursuant to Iowa Code section 85.39, prior to July 1, 2017, a workers' compensation claimant was always entitled to receive reimbursement from the employer and insurer for the cost of an IME by a provider of the claimant's choice if the employer had already obtained an impairment rating from a physician of the employer's and insurer's choice. In this case, defendants had claimant undergo an IME with John D. Kuhnlein, D.O., on August 4, 2016. Dr. Kuhnlein's IME report included an impairment rating. Dr. Kreiter's IME took place on February 8, 2017, six months after Dr. Kuhnlein's IME took place and one month after Dr. Kuhnlein issued his IME report. Therefore, pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$800.00 for the cost of Dr. Kreiter's IME. Prior to the legislative changes that went into effect on July 1, 2017, the employer and the insurer were required to reimburse an employee for the cost of an IME if the requirements of Iowa Code section 85.39 were otherwise met, even if the injury for which the employee was evaluated is determined not to be compensable. Because the petition in this case was filed before July 1, 2017, claimant is entitled to receive reimbursement from defendants for the cost of Dr. Kreiter's IME despite the fact that this claim was found not to be compensable.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 10, 2017, is modified as follows:

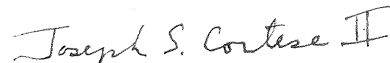
Defendants shall reimburse claimant in the amount of eight hundred and no/100 (\$800.00) for the cost of Dr. Kreiter's IME.

Claimant shall take nothing further from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and the parties shall split 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 13th day of March, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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