

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAWN DRAKE,

Claimant,

vs.

CEDAR RAPIDS COMMUNITY
SCHOOL DISTRICT,

Employer,

and

EMC INSURANCE COMPANIES,

Insurance Carriers,
Defendants.

FILED

JAN 18 2018

WORKERS' COMPENSATION

File No. 5051095

A P P E A L

D E C I S I O N

Head Note Nos: 1803; 2500; 2907;
4000; 4100; 5-9998

Claimant Dawn Drake appeals from an arbitration decision filed on April 18, 2016, and from a ruling on defendants' application for rehearing filed on May 13, 2016. Defendants Cedar Rapids Community School District, employer, and its insurer, EMC Insurance Companies, cross-appeal. The case was heard on January 7, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 28, 2016.

The deputy commissioner found claimant sustained 90 percent industrial disability, which entitles claimant to 450 weeks of permanent partial disability (PPD) benefits, as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on December 22, 2010. The deputy commissioner found claimant failed to carry her burden of proof that she is entitled to receive permanent total disability benefits using either the traditional industrial disability analysis or using the odd-lot analysis. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$238.63, which is five percent of \$4,772.64, for an unreasonable underpayment of temporary total disability (TTD) benefits. The deputy commissioner found claimant is not entitled to additional penalty benefits for an alleged unreasonable delay in the payment of PPD benefits. The deputy commissioner found claimant is entitled to payment by defendants of all requested past medical expenses itemized in Exhibit 18, including acupuncture treatment. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of an independent medical evaluation

(IME) performed by Marc Hines, M.D., on August 14, 2015. Pursuant to rule 876 IAC 4.33, the deputy commissioner found that while claimant is entitled to reimbursement from defendants in the amount of \$390.00 for the cost of the vocational report of Kent Jayne, M.A., M.B.A., claimant is not entitled to reimbursement by defendants for the cost of Mr. Jayne's vocational assessment which preceded his report. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$112.96.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant sustained 90 percent industrial disability as a result of the work injury, and in failing to find claimant is entitled to permanent total disability benefits by using either the traditional industrial disability analysis or by using the odd-lot analysis. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to additional penalty benefits for an alleged unreasonable delay in the payment of PPD benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendants for the cost of Dr. Hines' IME. Claimant also asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendants for the cost of Mr. Jayne's vocational assessment.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant sustained 90 percent industrial disability and in failing to find claimant sustained substantially less than 90 percent industrial disability. Claimant asserts the deputy commissioner erred in finding claimant is entitled to reimbursement from defendants for the cost of acupuncture treatment.

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, 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 April 18, 2016, 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 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 90 percent industrial disability as a result of the December 22, 2010, work injury. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she is entitled to receive permanent total disability benefits using either the traditional industrial disability analysis or using the odd-lot analysis. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$238.63 for an unreasonable underpayment of

additional penalty benefits for an alleged unreasonable delay in the payment of PPD benefits. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of all requested past medical expenses itemized in Exhibit 18, including acupuncture treatment. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of Dr. Hines' IME. Pursuant to rule 876 IAC 4.33, I affirm the deputy commissioner's finding that while claimant is entitled to reimbursement from defendants in the amount of \$390.00 for the cost of Mr. Jayne's vocational report, claimant is not entitled to reimbursement by defendants for the cost of Mr. Jayne's vocational assessment. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$112.96. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 18, 2016, and the ruling on defendants' application for rehearing filed on May 13, 2016, are affirmed in their entirety.

Defendants shall pay claimant four hundred fifty (450) weeks of permanent partial disability benefits at the weekly rate of four hundred sixty-nine and 77/100 dollars (\$469.77) commencing February 20, 2012.

Defendants shall receive a credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall pay a penalty of two hundred thirty-eight and 63/100 dollars (\$238.63) for unreasonable underpayment of temporary total disability benefits.

Defendants shall pay all past medical expenses, including acupuncture, itemized in Exhibit 18.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant \$390.00 for the cost of Mr. Jayne's vocational report, defendants shall also pay claimant for additional costs of the arbitration proceeding in the amount of \$112.96, 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 this 18th day of January, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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