

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSILIE LYNN YOUNG,

Claimant,

vs.

HUCKLEBERRY ENTERTAINMENT  
a/k/a FUN CITY a/k/a PZAZZ RESORT  
HOTEL,

Employer,

and

ZURICH AMERICAN INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

OCT 31 2018

WORKERS' COMPENSATION

File No. 5053858

A P P E A L

D E C I S I O N

Head Note Nos: 1108; 1803; 2502;  
2800; 5-9998

Defendants Huckleberry Entertainment a/k/a Fun City a/k/a/ Pzazz Resort Hotel, employer, and its insurer, Zurich American Insurance Company, appeal from an arbitration decision filed on May 18, 2017. Claimant Rosilie Lynn Young responds to the appeal. The case was heard on March 29, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 19, 2017.

The deputy commissioner found claimant carried her burden of proof that she sustained an injury to her left shoulder which arose out of and in the course of her employment with defendant-employer on or about October 31, 2015. The deputy commissioner found claimant gave timely notice of the work injury to defendants pursuant to Iowa Code Section 85.23. The deputy commissioner found claimant sustained 15 percent industrial disability as a result of the work injury, which entitles claimant to receive 75 weeks of permanent partial disability (PPD) benefits commencing on the date of injury. The deputy commissioner found claimant is entitled to payment by defendants for requested past medical expenses for treatment of the work injury. The deputy commissioner found claimant is entitled to receive reimbursement from defendants for the full \$1,470.00 cost of the independent medical evaluation (IME) of claimant by Sunil Bansal, M.D., performed on February 17, 2017. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained a work-related left shoulder

injury on or about October 31, 2015. Defendants assert the deputy commissioner erred in finding claimant gave timely notice of the work injury to defendants pursuant to Iowa Code Section 85.23. Defendants assert the deputy commissioner erred in finding claimant sustained 15 percent industrial disability as a result of the work injury. Defendants assert Dr. Bansal's IME cost is unreasonable and defendants should be ordered to reimburse claimant for a reduced portion of that cost.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision 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 May 18, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 carried her burden of proof that she sustained a work-related left shoulder injury on or about October 31, 2015. I affirm the deputy commissioner's finding that claimant gave timely notice of the work injury to defendants pursuant to Iowa Code Section 85.23. I affirm the deputy commissioner's finding that claimant sustained 15 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses for treatment of the work injury. I affirm the deputy commissioner's finding that Dr. Bansal's \$1,470.00 IME cost is reasonable and I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for that cost. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant was credible. Defendants assert the deputy commissioner erred in finding claimant was credible. Claimant asserts the deputy commissioner's finding that claimant was credible should be affirmed. 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 the deputy commissioner correctly assessed claimant's credibility in this matter. I find nothing in

the record in this matter which would cause me to reverse the deputy commissioner's finding that claimant was credible.

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 May 18, 2017, is affirmed in its entirety.

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred thirty-one and 21/100 dollars (\$331.21) commencing on October 31, 2015.

Defendants shall receive credit for all benefits paid.

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

Defendants shall pay the medical expenses listed in the hearing report. Defendants shall reimburse claimant for her out-of-pocket medical expenses and shall hold claimant harmless from the remainder of those expenses.

Defendants shall reimburse claimant in the amount of one thousand four hundred seventy and 00/100 dollars (\$1,470.00) for Dr. Bansal's IME cost.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants shall pay 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 31<sup>st</sup> day of October, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

YOUNG V. HUCKLEBERRY ENTERTAINMENT A/K/A FUN CITY A/K/A PZAZZ  
RESORT HOTEL

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