

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATILDE ANAYA PASTOR,

Claimant,

vs.

FARMLAND FOODS,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,
Defendants.

FILED

OCT 27 2017

WORKERS' COMPENSATION

File No. 5050551

A P P E A L

D E C I S I O N

Head Note No: 1804

Defendants Farmland Foods, employer, and its insurer, Safety National, appeal from an arbitration decision filed on April 12, 2016. Claimant Matilde Anaya Pastor responds to the appeal. The case was heard on July 23, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 30, 2015.

The deputy commissioner found claimant carried her burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on June 19, 2012, caused claimant to sustain permanent total disability under both the traditional industrial disability analysis and under the odd-lot analysis. The deputy commissioner awarded permanent total disability benefits commencing on October 21, 2013. The deputy commissioner found defendants are entitled to a credit for 91 weeks of benefits paid prior to the arbitration hearing. The deputy commissioner found claimant is entitled to payment by defendants of past medical expenses itemized and circled in Exhibit 23. The deputy commissioner found that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants for the following items: (1) \$2,684.00 for the cost of the vocational report prepared by Michael Newman, M.S., dated June 23, 2015; (2) \$385.00 for the cost of the supplemental report prepared by Mr. Newman, dated July 14, 2015; (3) \$900.00 for the cost of the functional capacity evaluation (FCE) report from Jake DeNell, PT, dated May 5, 2015, and (4) \$100.00 for claimant's filing fee. .

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that the work injury caused claimant to sustain

permanent total disability under either the traditional industrial disability analysis or under the odd-lot analysis, and in awarding claimant permanent total disability benefits. Defendants assert the deputy commissioner erred in awarding claimant "a greater industrial disability award beyond the PPD rating that she is being paid." Defendants assert the deputy commissioner erred in finding claimant is entitled to reimbursement from defendants in the amount of \$3,069.00 for the cost of Mr. Newman's two vocational reports and in finding claimant is entitled to reimbursement in the amount of \$900.00 for the cost of Mr. DeNell's FCE report.

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.

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 April 12, 2016, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant carried her burden of proof that the work injury caused claimant to sustain permanent total disability under both the traditional industrial disability analysis and under the odd-lot analysis, and I affirm the deputy commissioner's award of permanent total disability benefits commencing on October 21, 2013.

I affirm the deputy commissioner's finding that defendants are entitled to a credit for all weekly benefits paid by defendants.

I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of past medical expenses itemized and circled in Exhibit 23.

I affirm the deputy commission's finding that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants in the amount of \$3,069.00 for the cost of Mr. Newman's two vocational reports and in finding claimant is entitled to reimbursement in the amount of \$100.00 for claimant's filing fee.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I reverse the deputy commissioner's finding that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants in the amount of \$900.00 for the cost of Mr. DeNell's FCE report because no authorized medical provider requested the FCE and because Mr. DeNell is not a practitioner whose charge can be recovered as a cost pursuant to rule 876 IAC 4.33.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of April 12, 2016, is MODIFIED as follows:

Defendants shall pay claimant permanent total disability benefits at the rate of five hundred thirty-six and 26/100 dollars (\$536.26) per week from October 21, 2013, during the period of disability.

Defendants are entitled to a credit for all weekly benefits paid to date.

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

Defendants shall reimburse claimant for the medical expenses itemized and circled in Exhibit 23.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$3,169.00, 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 27th day of October, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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