

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID J. WALSH,

Claimant,

vs.

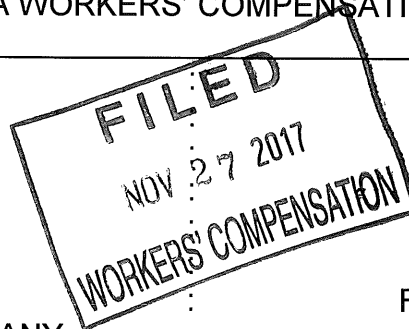
BIRD CHEVROLET COMPANY,

Employer,

and

OWNERS INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5056759

RULING ON APPLICATION

FOR REHEARING

Claimant filed an application for rehearing (application). Defendants filed a resistance to the application, and filed their own application for rehearing. Both applications are addressed in this ruling.

Concerning claimant's application, claimant again requests Exhibit C, a medical opinion from Bruce Gantz, M.D., be excluded for being untimely served. As noted in the arbitration decision, and at hearing, Dr. Gantz was a treating physician and performed cochlear implant surgery on claimant. Even though it was untimely served under the rules of this agency, Exhibit C was allowed into the record, as Dr. Gantz was a treating physician. See Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595 (Iowa 1997).

To ensure any potential prejudice would be resolved, claimant was given the opportunity to file rebuttal to Exhibit C within 30 days of the date of hearing (Transcript pages 12-14). In a June 16, 2017 email, claimant's counsel indicated no rebuttal would be filed.

Under the Schoenfeld decision, claimant failed to show he was prejudiced by the inclusion of Exhibit C. Claimant was given the opportunity to rebut Exhibit C and declined to do so. Given this record, claimant's application is denied.

Claimant's other requests for relief, in the application, are also denied.

Regarding defendants' application, defendants request the issues section of the arbitration decision be changed to reflect whether claimant's claim is barred by

application of Iowa Code section 85.26, and not Iowa Code section 85.23, as shown in the arbitration decision. A review of the administrative file indicates defendants are correct. The issues section of the arbitration decision is changed to reflect that an issue in dispute is whether claimant's claim is barred by application of Iowa Code section 85.26.

Defendants also seek to have the following issues added as issues in contention in the arbitration decision:

1. The proper framework for assessing permanent disability if both hearing loss and tinnitus are compensable;
2. Whether provider charges are fair and reasonable; and
3. The proper date for the alleged injury

Defendants' application is granted as to inclusion of these issues as well.

ORDER

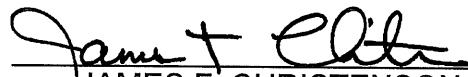
Therefore it is ordered:

That claimant's application is denied.

Defendants' application is granted.

The decision remains the same in all other respects.

Signed and filed this 27th day of November, 2017.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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