

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ASHLEY HEINRICH,

Claimant,

vs.

AREA AMBULANCE AUTHORITY, INC.,

Employer,

and

ACCIDENT FUND INSURANCE CO.
OF AMERICA,Insurance Carrier,
Defendants.

File No. 5061839

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1802; 2501; 2502;
2701; 2907; 4000; 5-9999

Defendants Area Ambulance Authority, Inc., employer, and its insurer, Accident Fund Insurance Company of America, appeal from an arbitration decision filed on June 5, 2020. Claimant Ashley Heinrich cross-appeals. The case was heard on November 4, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 25, 2019.

In the arbitration decision, the deputy commissioner found claimant sustained a work-related injury to her right hip, including a labral tear, on February 8, 2016, in addition to the stipulated back injury. As such, the deputy commissioner found claimant is entitled to payment by defendants for all medical expenses related to the right hip injury. The deputy commissioner found claimant is entitled to receive temporary total disability (TTD) benefits from July 1, 2019, through August 18, 2019, while she was off work following her right hip surgery. The deputy commissioner found claimant had not yet reached maximum medical improvement (MMI) for her hip condition at the time of the hearing and, as such, the deputy commissioner found claimant's entitlement to permanency benefits is not ripe for determination. Because claimant had returned to work at the time of the hearing, however, the deputy commissioner found claimant is not entitled to a running award of temporary benefits. The deputy commissioner found

claimant is not entitled to receive penalty benefits from defendants. The deputy commissioner awarded alternate medical care for claimant's right hip condition in the form of treatment with Matthew White, M.D. The deputy commissioner found claimant is entitled to receive reimbursement from defendants under Iowa Code section 85.39 for the original report authored by Farid Manshadi, M.D., but not for Dr. Manshadi's addendum report. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$950.00.

On appeal, defendants assert it should be found claimant is not entitled to receive permanent disability benefits for the back injury. Defendants additionally assert the deputy commissioner erred in finding claimant sustained a work-related right hip injury, and in finding claimant is entitled to payment by defendants for the medical expenses relating to treatment for the hip injury. Defendants assert the deputy commissioner erred in awarding claimant TTD benefits from July 1, 2019, through August 18, 2019.

On cross-appeal, claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits.

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

I 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, the arbitration decision filed on June 5, 2020, is affirmed in part without additional comment and affirmed in part with additional analysis.

I affirm the deputy commissioner's finding that claimant sustained a work-related right hip injury on February 8, 2016, including a labral tear, in addition to the stipulated back injury. I affirm the deputy commissioner's finding that claimant has not yet reached MMI for her right hip condition. As such, I affirm the deputy commissioner's finding that the issue of whether claimant is entitled to receive permanency benefits is not ripe for determination. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants under Iowa Code section 85.39 for the original report authored by Farid Manshadi, M.D., but not for Dr. Manshadi's addendum report. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$950.00.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues in their entirety.

I affirm the deputy commissioner's finding that claimant is entitled to reimbursement for all medical expenses related to her right hip injury with the following additional analysis:

Defendants argue the medical bills submitted by claimant were not produced timely pursuant to rule 876 IAC 4.19(3)(d). Subpart (e) of 876 IAC 4.19(3) sets forth the potential consequences for failing to timely exchange records:

If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, . . . the evidence will be excluded if the objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to 876-4.36(86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice. (emphasis added).

Defendants acknowledged at hearing that the treatment records to which the bills relate were timely and appropriately produced. (Hearing Transcript, p. 9) Defendants also stipulated that the expenses at issue are causally related to the right hip condition and that the medical providers would testify as to the reasonableness of the fees. (Hrg. Report, p. 3) Because defendants stipulated they were not offering any contrary evidence regarding the reasonableness of the fees, there was no harm in the bills' late exchange. When the bills were exchanged made no difference whatsoever about how defendants prepared or would have prepared for hearing. Thus, I find defendants were not unfairly prejudiced by the admission of those bills into the record. With this additional analysis, and having affirmed the deputy commissioner's finding that claimant's right hip injury is work related, I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the cost of the medical treatment relating to claimant's right hip injury.

I also affirm the deputy commissioner's finding that claimant is entitled to receive TTD benefits from July 1, 2019, through August 18, 2019. I offer the following additional analysis:

Defendants assert claimant's voluntary resignation from defendant-employer on January 17, 2018, precludes her from receiving temporary benefits after that date.

The Iowa Supreme Court in Schutjer v. Algona Manor Care Center, 780 N.W.2d 549 (Iowa 2010) addressed the impact of voluntary resignations on temporary benefits. The court held there is a two-part test to determine eligibility under section 85.33(3): "(1) whether the employee was offered suitable work, (2) which the employee refused. If so, benefits cannot be awarded, as provided in section 85.33(3)." Id. at 559.

This agency previously considered Schutjer and section 85.33(3) and applied the court's precedent as follows:

The court has opined that an employer's acceptance of an employee's voluntary quit from suitable employment is a rejection of suitable work on that date and any future date. Schutier v. Algona Manor Care Center, 780 N.W.2d 549, 559 (Iowa 2010). The court does not identify any mechanism for curing a refusal of a voluntary quit as ordered within the arbitration decision. Under the court's holding it can only be possible for claimant to receive temporary disability benefits if she undergoes further treatment and is removed from all employment for a period of healing.

Carillo v. Sam's Club, File No. 5028491 (Appeal July 13, 2011)

In this case, because claimant was removed from employment because of her surgery from August 1, 2019, through August 18, 2019, I find the holding in Schutjer does not preclude her from receiving TTD disability benefits. Thus, with this additional analysis, I affirm the deputy commissioner's finding that claimant is entitled to receive TTD benefits from July 1, 2019, through August 18, 2019.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 5, 2020, is affirmed with the above-stated additional analysis.

Defendants shall pay claimant temporary total disability benefits from July 1, 2019, through August 18, 2019, at the weekly rate of three hundred thirty-seven and 73/100 dollars (\$337.73).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay directly to the medical providers, reimburse claimant for any out-of-pocket expenses, and hold claimant harmless, for all causally related medical expenses itemized in Claimant's Exhibit 5.

Defendants shall provide claimant with ongoing medical care for her work-related right hip condition. Defendants shall authorize further evaluation and treatment with Matthew White, M.D., as claimant's authorized treating physician for the work-related right hip condition.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of nine hundred fifty and 00/100 dollars (\$950.00), 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 18th day of December, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Laura Ostrander (via WCES)