

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DARRYL W. GALLE,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5058981
FLYNN COMPANY, INC.,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
MIDWEST BUILDERS CASUALTY	:	
MUTUAL COMPANY,	:	
	:	Head Notes: 1100; 1402.30; 1402.40;
Insurance Carrier,	:	1802; 1803; 2501; 2907;
Defendants.	:	5-9999

Defendants Flynn Company, Inc., employer, and its insurer, Midwest Builders Casualty Mutual Company, appeal from an arbitration decision filed on March 5, 2019. Claimant Darryl W. Galle responds to the appeal. The case was heard on October 16, 2018, and it was deemed fully submitted in front of the deputy workers' compensation commissioner on December 3, 2018.

The deputy commissioner found claimant sustained an injury on October 19, 2016, that arose out of and in the course of his employment with defendant-employer. The deputy commissioner found the work injury aggravated claimant's pre-existing low back condition, and caused the need for medical care, including surgery. The deputy commissioner found claimant sustained permanent disability as a result of the work injury. More specifically, the deputy commissioner found claimant sustained 50 percent industrial disability. The deputy commissioner found claimant's permanent partial disability benefits should commence on October 20, 2016. The deputy commissioner found claimant is entitled to receive healing period benefits from July 29, 2017, through March 20, 2018. The deputy commissioner found defendants are responsible for the medical expenses itemized in claimant's Exhibit 6, and for claimant's independent medical examination (IME). The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

On appeal, defendants assert the deputy commissioner erred in finding claimant sustained a work-related injury. Defendants assert that because claimant did not sustain a compensable injury, he is not entitled to temporary disability benefits, permanent disability benefits, or reimbursement for medical expenses or for his IME. In the alternative, defendants assert the deputy commissioner's industrial disability award is excessive.

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 March 5, 2019, is affirmed in its entirety with some additional analysis as it relates to whether claimant's injury arose out of and in the course of his employment.

Defendants assert claimant did not prove his injury arose out of and in the course of his employment because his description of the accident is not supported by credible information. Defendants point to claimant's delay in notifying his employer and the lack of references to the accident in the medical records closest to the date of injury.

However, when asked why he did not report the incident right away to his employer, claimant testified, "Because I was hoping I could just walk it off and not have to see a doctor." (Hearing Transcript, p. 25) He then reported the injury when he "got called back to the shop" several weeks later. (Tr., p. 26) With respect to medical records, claimant explained the urgent care clinic's notes from November 2, 2016, were inaccurate because the provider confused his back injury with his non-work-related hand injury. (Tr., p. 82) Claimant testified he told the provider his back injury occurred several weeks prior and his hand injury occurred months prior - not the other way around, as the records suggest. (Tr., p. 73)

At no point in the deputy commissioner's arbitration decision did he find, either expressly or impliedly, that claimant was not credible. In fact, he expressly found claimant testified credibly concerning the occurrence and mechanism of injury. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed the credibility of claimant. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

Given claimant's testimony, I am not persuaded by defendants' argument that claimant's injury is not supported by credible information. With this additional analysis, I affirm the deputy commissioner's finding that claimant sustained an injury that arose out of and in the course of his employment on October 19, 2016. I affirm the remainder of the deputy commissioner's findings, conclusions, and analysis pertaining to this issue.

I affirm the deputy commissioner's finding that claimant sustained 50 percent industrial disability. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from June 29, 2017, through March 20, 2018. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement for his medical expenses and for his IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 5, 2019, is affirmed in its entirety with the above-stated additional analysis.

All weekly benefits shall be paid at the stipulated weekly rate of one thousand one hundred two and 67/100 dollars (\$1,102.67).

Defendants shall pay claimant healing period benefits from June 29, 2017, through March 20, 2018.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing on October 20, 2016.

Defendants shall receive credit for all weekly benefits paid to date, including the overpayment of 23 weeks of healing period benefits paid prior to the hearing per the parties' stipulation.

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).

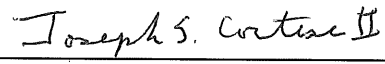
Defendants shall reimburse claimant for his out-of-pocket medical expenses itemized in Claimant's Exhibit 6 and shall pay, reimburse, and/or otherwise satisfy all remaining medical expenses itemized in Exhibit 6.

Defendants shall reimburse claimant in the amount of three thousand four hundred fifty-seven and no/100 dollars (\$3,457.00) for the cost of Dr. Bansal's IME under Iowa Code section 85.39.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration decision in the amount of one hundred and no/100 dollars (\$100.00), and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 15th day of May, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jenna L. Green Via WCES

William M. Lamson Via WCES