

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JARED COLGROVE,

Claimant,

vs.

HAWKINS CONSTRUCTION
COMPANY,

Employer,

and

AMERICAN ZURICH INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

JAN 29 2015

File No. 5043282 WORKERS' COMPENSATION

APPEAL

DECISION

Head Note Nos.: 1803, 2907

This was an arbitration case that was heard on June 18, 2014. The presiding deputy workers' compensation commissioner issued the arbitration decision on September 11, 2014. The deputy determined:

The un rebutted testimony of claimant is that he asked to return to work at Hawkins and was told that his employer could not accommodate him. Claimant earned approximately \$25.00 per hour while working at Hawkins. At his present position, claimant earns \$15.00 per hour.

Claimant has permanent restrictions to both his foot and his right shoulder that limit him from returning to work in the construction or carpentry industry. Claimant has looked for work. Claimant has a 2 percent permanent impairment to the body as a whole regarding his shoulder injury and a 1 percent permanent impairment to the body as a whole regarding his calcaneal fracture. The record indicates that Hawkins would not return claimant to work because of his work restrictions. For all practical purposes, it appears that claimant was terminated from his employment with Hawkins. Claimant was making \$25.00 per hour for his work at Hawkins. He now earns approximately \$15.00 per hour at

Bellevue. Given this record, it is found claimant has a 40 percent loss of earning capacity or industrial disability.

(Arbitration, page 7)

The deputy also determined:

The preparation of a vocational expert report is a cost that can be taxable. Rodriguez-Contreras v. JBS Swift & Company, File No. 5029197 (App. May 8, 2012) The costs of a practitioners report is not limited to \$150.00. EMCO v. Samardzic, 819 N.W.2d 426 (Iowa Ct. App. 2012).

Based on the law detailed above, the costs associated with the Corvel vocational report is a cost that can be recovered by claimant.

(Arbitration, p. 7)

On October 1, 2014, defendants filed a notice of appeal. They filed the appeal brief on November 24, 2014. Claimant filed his response brief on December 19, 2014. Defendants filed their reply brief on December 26, 2014.

In the appeal brief, defendants argued:

- A. The hearing deputy failed to evaluate properly the evidence in the record which demonstrated claimant sustained little or no loss of earning capacity as a result of the June 20, 2011 work incident to the extent any industrial disability does not exceed a 5 percent industrial disability.
- B. Whether claimant is entitled to the specific taxation of costs in the decision.

The undersigned reviewed the record de novo. On appeal, the appellant dictates all issues to be determined on appeal. Iowa Code section 17A.15; rule 876 IAC 4.28(4). The party who would suffer a loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d

410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994).

The presiding deputy specifically detailed on page 6 of the arbitration decision what weight he attributed to each medical provider involved in the contested case. The deputy also explained that he based his decision on claimant's credible testimony.

The deputy also explained on page 7 the legal authority for assessing the preparation of a vocational expert's report as a taxable cost. The deputy's rationale is adopted.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision the proposed arbitration decision filed on September 11, 2014.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 11, 2014 is AFFIRMED.

Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 29th day of January, 2015.



MICHELLE A. McGOVERN
ACTING WORKERS' COMPENSATION
COMMISSIONER

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