

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EDWARD POLITO,

Claimant,

vs.

WEITZ INDUSTRIAL, LLC,

Employer,

and

ILLINOIS NATIONAL INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

File No. 5056875

APPEAL  
DECISION

Head Note No: 1108

**FILED**  
NOV 20 2018  
WORKERS' COMPENSATION

Defendants Weitz Industrial, LLC, employer, and its insurer, Illinois National Insurance Company, appeal from an arbitration decision filed on June 5, 2017. Claimant Edward Polito responds to the appeal. The case was heard on March 31, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 19, 2017.

The deputy commissioner found claimant carried his burden of proof that his ongoing cervical spine condition was caused by, or was materially aggravated by, the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on November 10, 2014. The deputy commissioner found claimant was not at maximum medical improvement (MMI) for the work injury as of June 5, 2017, the date of the arbitration hearing. The deputy commissioner found claimant is entitled to receive healing period benefits commencing on the date of the arbitration decision if claimant was unemployed at that time. The deputy commissioner ordered defendants to immediately authorize a board certified orthopedic surgeon or neurosurgeon of claimant's choice to evaluate and treat claimant's cervical condition. The deputy commissioner found claimant is entitled to payment by defendants for the past requested medical expenses itemized in Joint Exhibits 32 and 33. The deputy commissioner found that pursuant to Iowa Code Section 85.39 claimant is entitled to receive reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Robert Milas on February 17, 2017. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant's ongoing cervical spine condition is causally related to the work injury.

Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits commencing on the date of the arbitration decision if claimant was unemployed at that time. Defendants assert the deputy commissioner erred in ordering defendants to immediately authorize a board certified orthopedic surgeon or neurosurgeon of claimant's choice to evaluate and treat claimant's cervical condition. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for the past requested medical expenses itemized in Joint Exhibits 32 and 33.

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.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on June 5, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant carried his burden of proof that his ongoing cervical spine condition was caused by, or was materially aggravated by, the November 10, 2014, work injury. I affirm the deputy commissioner's finding that claimant was not at MMI for the work injury as of the date of the arbitration hearing. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits commencing on the date of the arbitration decision if claimant was unemployed at that time. I affirm the deputy commissioner's order that defendants immediately authorize a board certified orthopedic surgeon or neurosurgeon of claimant's choice to evaluate and treat claimant's cervical condition. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the past requested medical expenses itemized in Joint Exhibits 32 and 33. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for the cost of Dr. Milas' IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 5, 2017, is affirmed in its entirety.

Defendants shall immediately commence temporary total disability/healing period benefits covering all dates claimant was unemployed after June 5, 2017, through the present at the stipulated weekly benefit rate of nine hundred seven and 24/100 dollars (\$907.24).

Defendants shall immediately authorize a board certified orthopedic surgeon or neurosurgeon of claimant's choice to evaluate and perform any surgery or other necessary treatment to address the claimant's current cervical condition.

Defendants shall pay the medical expenses listed in Joint Exhibits 32 and 33. Defendants shall reimburse claimant for his out-of-pocket medical expenses and shall hold claimant harmless from the remainder of those expenses.

Defendants shall reimburse claimant for the cost of Dr. Milas' IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding, 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 on this 20<sup>th</sup> day of November, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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