

care, but is entitled to reasonable and necessary ongoing medical treatment for his left lower extremity by providers chosen by defendants. The deputy commissioner found claimant cannot raise the issue of whether he is entitled to receive penalty benefits from defendants because claimant failed to indicate on the hearing report that entitlement to penalty benefits was an issue in this case. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the full cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D. The deputy commissioner found that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants for the total amount of \$2,533.33 for the reports of Kunal K. Patra, M.D., and Theresa Wolford, M.S. The deputy commissioner ordered the parties to split the remaining costs of the arbitration proceeding, including the cost of the hearing transcript.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant was not a credible witness. Claimant asserts the deputy commissioner erred in finding claimant is at MMI for the work injury and in finding claimant is not entitled to receive a running award of healing period benefits. In the alternative, claimant asserts if it is found on appeal that claimant is at MMI for the work injury, it should be found that claimant is permanently and totally disabled due to a permanent brain injury allegedly resulting from the work injury. Claimant asserts the deputy commissioner erred in finding claimant cannot raise the issue of whether he is entitled to receive penalty benefits from defendants because claimant failed to indicate on the hearing report that entitlement to penalty benefits was an issue in this case.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety, except defendants assert the award for scheduled member functional disability for claimant's left lower extremity should be reduced from 25 percent to 10 percent pursuant to Iowa Code section 85.34(2)(x).

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 December 23, 2019, is affirmed in part and is modified in part.

I affirm the deputy commissioner's finding that claimant proved he sustained permanent disability of his left lower extremity as a result of the work injury. I affirm the deputy commissioner's finding that the correct date for the commencement of claimant's permanent partial disability benefits is February 23, 2018. I affirm the deputy commissioner's finding that claimant failed to prove his permanent disability resulting from the work injury extends beyond his left lower extremity into his body as a whole. I affirm the deputy commissioner's finding that claimant failed to prove he sustained a permanent brain injury as a result of the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits for the work injury because the permanent disability resulting from the injury is confined to claimant's

left lower extremity. I affirm the deputy commissioner's finding that claimant failed to prove he was not at MMI for the work injury, and I affirm the deputy commissioner's finding that claimant is not entitled to receive a running award of healing period benefits. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care, but is entitled to reasonable and necessary ongoing medical treatment for his left lower extremity by providers chosen by defendants. I affirm the deputy commissioner's finding that claimant cannot raise the issue of whether he is entitled to receive penalty benefits from defendants because claimant failed to indicate on the hearing report that entitlement to penalty benefits was an issue in this case. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the full cost of Dr. Bansal's IME. I affirm the deputy commissioner's finding that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants in the total amount \$2,533.33 for the reports of Dr. Patra, and Ms. Wolford. I affirm the deputy commissioner's order that the parties split the remaining costs of the arbitration proceeding, including the cost of the hearing transcript.

With regard to the issue of claimant's credibility, while I performed a de novo review of this case on appeal, 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. In this case, the deputy commissioner found claimant was not credible and claimant asserts on appeal that the deputy commissioner erred in that regard. I find the deputy commissioner correctly assessed the claimant's credibility. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding all of the above issues.

The remaining issue to be decided on appeal is the extent of claimant's entitlement to permanent partial disability benefits for the work injury. For the reasons that follow, the deputy commissioner's finding that claimant sustained scheduled member functional disability of 25 percent of his left lower extremity as a result of the work injury is modified.

In the arbitration decision, the deputy commissioner stated:

Because the injury is to a scheduled member, claimant is not entitled to an evaluation of disability based upon loss of earning capacity. Only the functional loss can be awarded. Based on the functional restrictions testified to by the claimant and the restrictions recommended by Dr. Bansal, it is determined claimant has sustained a 25 percent functional impairment of the left lower extremity.

(Arbitration Decision, p. 15)

The only permanent impairment ratings issued for claimant's left lower extremity for the work injury are Dr. Morrison's impairment rating of zero percent (Exhibit B, p. 6), and Dr. Bansal's impairment rating of ten percent. (Ex. 3, p. 13) As defendants point out in their appeal brief, Iowa Code section 85.34(2)(x) states:

In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "t", or paragraph "u" when determining functional impairment and not loss of earning capacity.

Because claimant's permanent impairment of his left lower extremity in this case is determined by Iowa Code section 85.34(2)(p), the only option under Iowa Code section 85.34(2)(x) is to adopt either Dr. Morrison's impairment rating or Dr. Bansal's impairment rating. Because I affirm the deputy commissioner's finding that claimant did sustain permanent disability of his left lower extremity as a result of the work injury, I find it is proper to adopt Dr. Bansal's impairment rating of ten percent of the left lower extremity, which entitles claimant to receive 22 weeks of permanent partial disability benefits commencing on February 23, 2018. The deputy commissioner's award of 25 percent impairment of the left lower extremity is hereby modified.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 23, 2019, is affirmed in part and modified in part.

Defendants shall pay claimant twenty-two (22) weeks of permanent partial disability benefits at the weekly rate of four hundred eighteen and 56/100 dollars (\$418.56) commencing on February 23, 2018.

Defendants shall receive credit against the award for weekly benefits previously paid beginning February 23, 2018.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

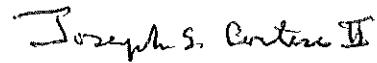
Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant for the full cost of Dr. Bansal's IME

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant in the total amount of two thousand five hundred thirty-three and 33/100 dollars (\$2,533.33) for the reports of Dr. Patra and Ms. Wolford.

Pursuant to rule 876 IAC 4.33, the parties shall split the remaining costs of the arbitration proceeding, including the cost of the hearing transcript, and claimant shall pay defendants' costs, if any, of the appeal.

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 4th day of August, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Al Sturgeon (via WCES)

Rachael Neff (via WCES)

Kent Smith (via WCES)