

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 ABE CAMP,

File No. 5066058.01

Claimant,

A P P E A L

vs.

D E C I S I O N

DURHAM SCHOOL SERVICES,

Employer,

and

OLD REPUBLIC INSURANCE CO.

 Head Notes: 1402.20; 1402.30; 1402.40;
 1804; 2206; 2501; 2502; 2504;
 2907; 5-9999
Insurance Carrier,
Defendants.

Defendants Durham School Services, employer, and its insurer, Old Republic Insurance Co., appeal from an arbitration decision filed on September 13, 2021. Claimant Abe Camp responds to the appeal. The case was heard on October 19, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 7, 2020.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained an injury arising out of and in the course of his employment on November 27, 2017, as alleged. The deputy commissioner found claimant is permanently and totally disabled as a result of the work injury, and the deputy commissioner awarded claimant permanent total disability benefits starting November 27, 2017. The deputy commissioner found defendants are responsible for all requested past medical charges related to claimant's back condition, and the deputy commissioner also found defendants are responsible for the requested past medical charges for claimant's April 2018 heart surgery. The deputy commissioner found claimant is entitled to reimbursement from defendants for the cost of claimant's walker and for the cost of a hydrocodone prescription. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the independent medical examination (IME) of claimant performed by Mark Taylor, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury on November 27, 2017, as alleged. Defendants assert the deputy commissioner erred in finding claimant is permanently

and totally disabled as a result of the work injury. Defendants assert the deputy commissioner erred in finding defendants are responsible for the requested past medical charges related to claimant's back condition. Defendants assert the deputy commissioner erred in finding defendants are responsible for the requested past medical charges related to claimant's heart surgery. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive weekly benefits while he was off work related to the heart surgery. Defendants assert the deputy commissioner erred in finding the commencement date for permanent disability benefits is November 27, 2017. Defendants assert the deputy commissioner erred in finding claimant is entitled to reimbursement for the cost of the walker and the hydrocodone prescription.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration 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 September 13, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 proved he sustained a work-related injury on November 27, 2017, as alleged. I affirm the deputy commissioner's finding that claimant is permanently and totally disabled as a result of the work injury, and I affirm the deputy commissioner's award of permanent total disability benefits for the injury. I affirm the deputy commissioner's finding that defendants are responsible for all requested past medical charges related to claimant's back condition. I affirm the deputy commissioner's finding that claimant should be reimbursed by defendants for the cost of his walker and for the cost of the hydrocodone prescription. 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 those findings without additional analysis or comment.

I affirm the deputy commissioner's finding that defendants are responsible for the requested past medical charges for the April 2018 heart surgery, with the following additional analysis:

On appeal defendants assert the deputy commissioner erred in finding defendants are responsible for medical charges related to the April 2018 heart surgery. The deputy commissioner noted in the arbitration decision:

As defendants point out, claimant had a well-established history of cardiac issues prior to the work injury. This is not disputed, and claimant is not alleging that his cardiac condition is work-related. Rather, claimant argues that his 2018 heart surgery was a condition precedent that required treatment in order to proceed with his back surgery. This agency has a long history of precedents that require an employer to treat a preexisting non-work-related condition to the extent that doing so is necessary in order to effectively treat a work-related condition. Shilling v. Eby Constr. Co., II Iowa Industrial Commissioner Report, 350 (App. 1981). In other words, a medical procedure that is necessary to address a non-work-related condition preliminary to treating a condition that is caused or aggravated by the work injury may be the responsibility of the defendants. Gray v. Five Star Quality Care, File No. 5001178 (Arb. Sept. 16, 2003); See also Woods v. Siemens-Furnas Controls, File No. 1303082 (App. July 22, 2002); Edgington v. Iowa Spring Mfg., File No. 1281672 (Arb. Nov. 24, 2014)

One of the basic rules of workers' compensation law is that the employer takes the employee as is. Id. Few individuals are a picture of perfect physical and mental health. Id. Claimant's coronary artery disease and related heart problems are preexisting conditions. His heart disease did not intervene subsequent to his injury. Clearly, the heart surgery had benefits beyond simply allowing the subsequent back surgery to take place. That being said, it was necessary to remedy his heart condition prior to proceeding to his back surgery. The rule of law is no different than if there is a need to treat obesity, high blood pressure, uncontrolled diabetes, or any other preexisting malady before directly addressing the results of the work-related injury. See Woods. As such, I find that the heart surgery in April 2018 was reasonable and necessary medical treatment in the course of treating claimant's work-related back injury. See Gray.

Treatment for preexisting conditions is the employer's responsibility only to the extent that is required in order for care to be given for the work-related injury. See Woods. In this case, claimant's open-heart surgery that took place in April 2018 is part of the care of the work-related back injury. The employer is not liable for treatment related to his cardiac condition subsequent to the date of his back surgery.

(Arb. Dec. pp. 15-16)

As noted by the deputy commissioner, this agency has a long history of precedent requiring an employer to treat a preexisting non-work-related condition to the extent that doing so is necessary in order to effectively treat a work-related condition. Woods, File No. 1303082 at 12 (Commissioner Trier found defendants responsible to pay for the cost of treating claimant's preexisting diabetes up to the point of her surgery, noting "getting Martha's diabetes under control is part of the care of the injury" and not subsequent to the surgery); Shilling v. Eby Constr. Co., Inc., II Iowa Indus. Comm'n. R. at 350 (Commissioner Landess found "any treatment of claimant's back problems

requires prior treatment of his obesity, regardless of whether the diagnosis of claimant's problem is back strain or a herniated disc" and even if the "weight loss together with physical therapy do not relieve claimant's back symptoms, and surgical intervention is necessary, claimant must still shed his excess weight"). It appears this precedent has never been addressed beyond this agency. The deputy commissioner's finding that defendants are responsible for the medical charges related to the April 2018 heart surgery is affirmed.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 13, 2021, is affirmed in its entirety with the above additional analysis.

Defendants shall pay claimant permanent total disability benefits at the stipulated weekly rate of two hundred seventeen and 99/100 dollars (\$217.99), commencing on November 27, 2017, and continuing during the period of claimant's permanent total disability.

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

Defendants are responsible for all past and future medical treatment causally related to claimant's November 27, 2017, back injury.

Defendants are responsible for the requested past medical expenses related to treatment of claimant's cardiac condition incurred starting March 26, 2018, through September 4, 2018, the date of claimant's back surgery. Defendants are not responsible for any medical expenses incurred after September 4, 2018, related to the treatment of claimant's cardiac condition.

Pursuant to Iowa Code section 85.27, defendants shall reimburse claimant two hundred thirteen and 95/100 dollars (\$213.95) for the purchase of claimant's walker, and fourteen and 33/100 dollars (\$14.33) for the cost of the hydrocodone prescription.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of four thousand five hundred seventy-two and 50/100 dollars (\$4,572.50) for the cost of Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and 00/100 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), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 31st day of March, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jenna Green (via WCES)

Lori Scardina Utsinger (via WCES)

Mark Woollums (via WCES)