

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSE KOITHAN,

Claimant,

vs.

AMERICAN EAGLE AIRLINES,

Employer,

and

NEW HAMPSHIRE INS. CO.,

Insurance Carrier,
Defendants.

File No. 5048430

A P P E A L

D E C I S I O N

Head Note Nos: 1402.20; 1803; 2502;
2907

FILED
MAY 21 2019
WORKERS' COMPENSATION

Defendants American Eagle Airlines, employer, and its insurer, New Hampshire Ins. Co, appeal from an arbitration decision filed on December 15, 2017. Claimant Rose Koithan cross-appeals. The case was heard on June 20, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 14, 2017.

The deputy commissioner found claimant sustained 45 percent industrial disability, which entitles claimant to receive 225 weeks of permanent partial disability benefits, as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on October 18, 2013. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants in the amount of \$3,800.00 for the cost of the independent medical evaluation (IME) of claimant performed by Jacqueline Stoken, D.O., on October 28, 2014. The deputy commissioner declined to tax defendants pursuant to rule 876 IAC 4.33 for that portion of Dr. Stoken's fee charged for the preparation of her October 28, 2014, IME report. 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 awarding claimant 45 percent industrial disability. Defendants assert the award of industrial disability should either be reduced substantially or it should be reversed entirely.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant is not entitled pursuant to Iowa Code section 85.39 to receive reimbursement

from defendants for the cost of Dr. Stoken's October 28, 2014, IME. In the alternative, claimant asserts that the portion of Dr. Stoken's fee charged for preparation of her October 28, 2014, IME report should be taxed as a cost against defendants pursuant to rule 876 IAC 4.33.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having 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, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on December 15, 2017, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant sustained 45 percent industrial disability as a result of the October 18, 2013, work injury. I affirm the deputy commissioner's finding that claimant is not entitled pursuant to Iowa Code section 85.39 to receive reimbursement from defendants for the cost of Dr. Stoken's October 28, 2014, IME.

I reverse the deputy commissioner and I find that the portion of Dr. Stoken's fee charged for the preparation of her October 28, 2014, IME report should be taxed as a cost against defendants pursuant to rule 876 IAC 4.33. I provide the following analysis for my decision in that regard:

In Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), the Iowa Supreme Court held that if an injured worker fails to meet the requirements of Iowa Code section 85.39 to be reimbursed for the cost of an IME, that portion of the IME charge attributable to the preparation of the report may be taxed as a cost pursuant to rule IAC 4.33. (867 N.W. 2d at 846-847) In this case, the deputy commissioner, using her discretion, declined to tax defendants with that portion of Dr. Stoken's fee attributable to the preparation of her October 28, 2014, IME report. I respectfully disagree with the deputy commissioner. Dr. Stoken's invoice indicates of the total amount of \$3,800.00 she charged for the October 28, 2014, IME, she charged \$1,000.00 for the preparation of the report. (Exhibit 5, p. 50) Pursuant to rule 876 IAC 4.33, I exercise my discretion and I find defendants should be taxed for that amount. Therefore, defendants shall pay claimant's costs of the arbitration proceeding in the total amount of \$1,100.00.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 15, 2017, is MODIFIED as follows:

Defendants shall pay two hundred twenty-five (225) weeks of permanent partial disability benefits at the weekly rate of three hundred sixty-four and 32/100 dollars (\$364.32) commencing on the stipulated date of September 3, 2014.

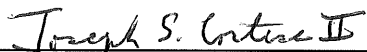
Defendants shall receive a credit for all weekly benefits paid to date.

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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand one hundred and 00/100 dollars (\$1,100.00), 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 21st day of May, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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