

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDALL GRANDGEORGE,

Claimant,

vs.

PETERSON CONSTRUCTION,

Employer,

and

HIGHLANDS INSURANCE CO. IN
RECEIVERSHIP,

Insurance Carrier,
Defendants.

FILED

FEB 12 2015

WORKERS COMPENSATION File No. 5047054

RULING ON

MOTION FOR REHEARING

This case was tried before the undersigned on December 18, 2014. On January 29, 2015, an arbitration decision was issued in this matter. On February 5, 2015, claimant filed a timely request for reconsideration. No resistance is on file. The motion is considered.

The basis for the motion is to seek reconsideration of the denial of the section 85.39 independent medical examination (IME) bill as a cost and to correct scrivener's errors. Claimant's motion appears to have some merit.

At the arbitration hearing claimant sought reimbursement of an IME as a cost. The arbitration decision denies the \$3,240.00 expense of Dr. Sassman's IME as a cost under rule 4.33. See Des Moines Area Regional Transit Authority v. Young, No. 14-0231 (Iowa Ct. App., October 1, 2014) (on further review). Claimant argues that because the case is on further review it is not precedential. Although the case may not be precedential it is still persuasive to the agency. The claimant further argues that her case is distinguishable from Young because he followed the protocol set forth in Iowa Code section 85.39. Namely, he did not obtain his IME until after an evaluation of permanent disability had been made by a physician retained by the defendants, which he felt was too low. Claimant further argues that although he did not request that the IME expense be reimbursed pursuant to section 85.39 the courts routinely consider form over any mistake in how counsel requested reimbursement. Although claimant requested the IME be reimbursed as a cost because claimant did not obtain his IME until after defendants obtained an evaluation of permanent disability which claimant felt was too low the undersigned will exercise my discretion and look to substance over form and order defendants to reimburse claimant the cost of the IME pursuant to Iowa Code section 85.39.


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Claimant also points out two scrivener's errors which need to be corrected. First, on page 6 of the arbitration decision the job of "insulator/operator" should instead state "inserter/operator." Second, on page 10 of the decision, in the last sentence of the second full paragraph, it should read that ". . . Mr. Grandgeorge has proven"

THEREFORE it is ordered: The claimant's motion for reconsideration is granted. The arbitration decision will be modified to reflect claimant is entitled to reimbursement of the expense of Dr. Sassman's IME pursuant to Iowa Code section 85.39. The arbitration decision will also be modified to correct the two scrivener's errors as noted above.

Signed and filed this 12th day of February, 2015.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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