

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY GURWELL,

Claimant,

vs.

ANDERSON ERICKSON DAIRY,

Employer,

and

TRAVELERS INDEMNITY COMPANY  
OF CT.

Insurance Carrier,  
Defendants.

**FILED**

**MAY 25 2017**

**WORKERS' COMPENSATION**

File No. 5051907

**A P P E A L**

**D E C I S I O N**

Head Note Nos: 1803, 2907

Defendants Anderson Erickson Dairy, employer, and its insurer, Travelers Indemnity Company of CT, appeal from an arbitration decision filed on November 17, 2015. Claimant Randy Gurwell cross-appeals. The case was heard on October 7, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the arbitration hearing.

In the arbitration decision, the deputy commissioner found the stipulated work injury which occurred on May 17, 2014, caused claimant to sustain 20 percent permanent functional impairment of the right lower extremity, which entitles claimant to 44 weeks of permanent partial disability (PPD) benefits commencing on July 14, 2014. The deputy commissioner found the independent medical evaluation (IME) charge in the amount of \$2,600.00 from Jacqueline Stoken, D.O., is unreasonable and the deputy commissioner ordered defendants to reimburse claimant in the amount of \$1,800.00 for Dr. Stoken's IME charge. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to any PPD benefits.

Claimant asserts on cross-appeal that the deputy commissioner erred in ordering defendants to reimburse claimant \$1,800.00 for Dr. Stoken's IME charge instead of ordering defendants to reimburse claimant for the full \$2,600.00 charge.

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, 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 November 17, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis 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 the May 17, 2014, work injury caused claimant to sustain 20 percent permanent functional impairment of the right lower extremity, which entitles claimant to 44 weeks of PPD benefits commencing on July 14, 2014. I affirm the deputy commissioner's finding that Dr. Stoken's IME charge in the amount of \$2,600.00 is unreasonable and I affirm the deputy commissioner's order that defendants reimburse claimant in the amount of \$1,800.00 for Dr. Stoken's IME charge. 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 November 17, 2015, is affirmed in its entirety.

Defendants shall pay claimant forty-four (44) weeks of permanent partial disability benefits at the rate of five hundred twenty-nine and 97/100 dollars (\$529.97) per week commencing on July 14, 2014.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall receive a credit for all benefits previously paid.

Defendants shall pay claimant one thousand eight hundred and no/100 dollars (\$1,800.00) as reimbursement for Dr. Stoken's IME pursuant to Iowa Code Section 85.39.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and the parties shall split 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 this 25<sup>th</sup> day of May, 2017.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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