

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MINDY SCHINDEL,

Claimant,

vs.

CASEY'S MARKETING COMPANY,

Employer,

and

EMCASCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

AUG 14 2018

WORKERS' COMPENSATION

File No. 5053577

A P P E A L

D E C I S I O N

Head Note Nos: 1402; 1801; 1803; 2501;
2502; 5-9998

Claimant Mindy Schindel appeals from an arbitration decision filed on March 2, 2017. Defendants, Casey's Marketing Company, employer, and its insurer, EMCASCO Insurance Company, respond to the appeal. The case was heard on September 14, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 13, 2017.

The deputy commissioner found claimant failed to carry her burden of proof that she sustained permanent disability to her lumbar spine as alleged as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on June 5, 2014. The deputy commissioner found the work injury caused only a temporary aggravation of claimant's pre-existing lumbar spine condition. The deputy commissioner found claimant failed to prove entitlement to receive any permanent disability benefits for her lumbar spine condition. The deputy commissioner found claimant failed to prove entitlement to receive any additional temporary disability benefits for her lumbar spine condition beyond what was already paid through October 26, 2014.

The deputy commissioner found claimant failed to carry her burden of proof that she sustained either temporary disability or permanent disability to her thoracic spine as alleged as a result of the June 5, 2014, work injury. The deputy commissioner found claimant failed to prove entitlement to receive either temporary disability benefits or permanent disability benefits for her pre-existing thoracic spine condition.

The deputy commissioner found claimant is not entitled to receive payment from defendants for ongoing medical care for the June 5, 2014, work injury. The deputy commissioner found claimant is entitled to receive reimbursement from defendants in the amount of \$695.00 pursuant to Iowa Code section 85.39 for the cost of the independent medical evaluation (IME) performed by Robert Milas, M.D., on May 3, 2016. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained permanent disability to her lumbar spine and her thoracic spine as a result of the June 5, 2014, work injury. Claimant asserts the deputy commissioner erred in finding claimant failed to prove entitlement to receive permanent disability benefits. Claimant asserts the deputy commissioner erred in failing to award claimant at least 25 percent industrial disability. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive payment by defendants for ongoing medical care for the work injury.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency 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 March 2, 2017, 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 failed to carry her burden of proof that she sustained permanent disability to her lumbar spine as alleged as a result of the June 5, 2014, work injury. I affirm the deputy commissioner's finding that the work injury caused only a temporary aggravation of claimant's pre-existing lumbar spine condition. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to receive any permanent disability benefits for her lumbar spine condition. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to receive any additional temporary disability benefits for her lumbar spine condition beyond what was already paid through October 26, 2014.

I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained either temporary disability or permanent disability to her thoracic spine as alleged as a result of the June 5, 2014, work injury. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to receive either temporary disability benefits or permanent disability benefits for her pre-existing thoracic spine condition.

I affirm the deputy commissioner's finding that claimant is not entitled to receive payment from defendants for ongoing medical care for the June 5, 2014, work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39 claimant is entitled to reimbursement from defendants for the cost of Dr. Milas' IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 2, 2017, is affirmed in its entirety.

Defendants shall reimburse claimant for Dr. Milas' IME fee in the amount of six hundred ninety-five and 00/100 dollars (\$695.00).

Claimant shall take nothing further from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall bear their own costs of the arbitration proceeding, and claimant 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 14th day of August, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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