

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAM DEARDORFF,	:	FILED
Claimant,	:	SEP 10 2015
vs.	:	WORKERS' COMPENSATION
GITS MANUFACTURING,	:	File Nos. 5042390, 5042931
Employer,	:	APPEAL
and	:	DECISION
TRAVELERS PROPERTY CASUALTY,	:	
Insurance Carrier,	:	Head Note Nos.: 1108.50; 1402.30;
Defendants.	:	1403.30; 1803; 1804; 1806;
	:	2401; 2402; 2501; 4000.2

Defendants GITS Manufacturing and Travelers Property Casualty appeal from an arbitration decision filed on August 11, 2014. Claimant Pam Deardorff filed a cross-appeal. The case was heard on April 17, 2014, and it was considered fully submitted on July 1, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner determined that claimant proved she sustained a work-related low back injury on September 23, 2010, and a work-related cumulative chemical inhalation exposure injury under an alleged injury date of October 19, 2011. The deputy commissioner also determined that the claim for the inhalation injury is not barred by the two-year statute of limitation contained in Iowa Code section 85.26(1), nor is it barred by the 90-day notice defense contained in Iowa Code section 85.23. The deputy commissioner also determined claimant is not entitled to penalty benefits pursuant to Iowa Code section 86.13 for unreasonable delay or denial in payment of weekly benefits for the low back injury. The deputy commissioner denied claimant reimbursement for the IME of Sunil Bansal, M.D. under Iowa Code section 85.39, but did award claimant the full cost of Dr. Bansal's IME and the cost of the vocational report from Carma Mitchell, M.S., pursuant to 876 IAC 4.33(86).

The deputy commissioner awarded claimant permanent total disability benefits for the low back injury, with those benefits starting on November 19, 2013, the day after claimant's employment with the defendant-employer ended. Because claimant was awarded permanent total disability benefits for the low back injury, the deputy commissioner did not make a separate award of permanent disability benefits for claimant's inhalation injury.

Defendants assert on appeal that the deputy commissioner erred in awarding permanent total disability benefits for claimant's low back injury. Defendants also assert that the deputy commissioner erred in determining that claimant's inhalation injury is causally related to claimant's employment. Defendants also assert that the deputy commissioner erred in finding that the claim for the inhalation injury is not barred by the 90-day notice defense.

Claimant asserts on cross-appeal that the deputy commissioner erred in denying claimant reimbursement for Dr. Bansal's IME under Iowa Code section 85.39.

The detailed arguments of the parties have been considered and the record of evidence has been reviewed de novo.

Defendants, in their brief, acknowledged that the arbitration decision "recognized the infirmities in the Claimant's case" but the deputy commissioner ultimately found Dr. Bansal's opinions to be more convincing. (Exhibit 9) The preponderance of the evidence in the record in this case supports a finding that claimant sustained a permanent material aggravation of her pre-existing low back condition and that given her age, 62, her motivation to work, her education, her work experience, and all other relevant factors established by a preponderance of the evidence, claimant has lost any ability to compete in the labor market.

Pursuant to Iowa Code sections 86.24 and 17A.5, I AFFIRM and ADOPT as the final agency decision those portions of the proposed arbitration decision filed on July 1, 2014, that relate to issues properly raised on intra-agency appeal except for the issue of costs and on that issue I REVERSE the deputy commissioner.

Claimant requested reimbursement of Dr. Bansal's fee for his IME. The deputy denied that request under Iowa Code section 85.39 because the report was obtained before defendants obtained any specific impairment rating for claimant's low back condition. The deputy commissioner then awarded the entirety of Dr. Bansal's IME fee pursuant to 876 IAC 4.33(86).

However, Dr. Bansal's IME fee cannot be shifted from Iowa Code section 85.39 to 876 IAC 4.33(86). In Young v. Des Moines Area Region Transit Authority, No. 14-0231 (Iowa June 5, 2015), the Iowa Supreme Court held:

85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report. Further, even if the examination and report were considered to be a single, indivisible fee, the commissioner erred in taxing it as a cost under administrative rule 876 IAC 4.33 because the section 86.40 discretion to tax costs is expressly limited by Iowa Code section 85.39.

The deputy commissioner disallowed the cost for the medical report from the Department of Occupational and Environmental Health because the agency rule permits the assessment of no more than two doctors' or practitioners' reports. The deputy commissioner awarded the cost of Dr. Bansal's report and the cost of the report from claimant's vocational expert. Because the cost of Dr. Bansal's IME cannot be awarded under 876 IAC 4.33(86), it is now appropriate to award the cost of the report from the Department of Occupational and Environmental Health.

ORDER

The arbitration decision of July 25, 2014, is AFFIRMED in part and REVERSED as to the sole issue of costs and the underlying arbitration decision is MODIFIED as follows:

Defendants shall reimburse claimant's costs associated with this case as follows:

- 1) Filing fee (\$100)
- 2) Service fee (\$23.72)
- 3) Cost of deposition transcript (\$102.00)
- 4) Vocational rehabilitation report (\$420.00)
- 5) Medical report from the Department of Occupational and Environmental Health (\$400.00)

Costs of this appeal are assessed against defendants.

Signed and filed this 10th day of September, 2015.



JOSEPH S. CORTESE II
IOWA WORKERS'
COMPENSATION COMMISSIONER

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