

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM L. SEARCY,

Claimant,

vs.

ANDERSON ERICKSON DAIRY,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,
Defendants.

File No. 5056942

APPEAL
DECISION

Head Notes: 1402.40, 1801, 2501
2502, 2907

FILED
JUN 11 2019
WORKERS' COMPENSATION

Claimant William L. Searcy appeals from an arbitration decision filed on January 12, 2018. Defendants, Anderson Erickson Dairy, employer, and its insurer, Travelers Indemnity Co. of Ct, cross-appeal. The case was heard on September 26, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 18, 2017.

The deputy commissioner found claimant failed to carry his burden of proof that he sustained permanent disability as alleged from a stipulated injury which arose out of and in the course of his employment with defendant-employer on August 5, 2014. The deputy commissioner found claimant sustained temporary disability only as a result of the work injury. The deputy commissioner found claimant is entitled to receive healing period benefits for the work injury from August 6, 2014, to August 14, 2014. The deputy commissioner found claimant is not entitled to payment by defendants for the past requested medical expenses itemized in Exhibit 4 which were incurred after October 29, 2014. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$221.65.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained permanent disability as alleged as a result of the August 5, 2014, work injury. Claimant asserts it should be found on appeal that he sustained 65 percent industrial disability as a result of the work injury. Claimant asserts the deputy commissioner erred by failing to award claimant healing period benefits after August 14, 2014. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for the past requested medical expenses itemized

in Exhibit 4 which were incurred after October 29, 2014. Claimant asserts the deputy commissioner erred in failing to tax defendants with claimant's claimed costs of the arbitration proceeding in the amount of \$4,588.29.

Defendants assert on appeal that while the the arbitration decision should be affirmed for the most part, the deputy commissioner erred in taxing defendants with claimant's costs in the amount of \$221.65.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the proposed arbitration decision filed on January 12, 2018, is affirmed in part and modified in part.

I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained permanent disability as alleged as a result of the August 5, 2014, work injury. I affirm the deputy commissioner's finding that claimant sustained temporary disability only as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits for the work injury from August 6, 2014, to August 14, 2014. I affirm the deputy commissioner's finding claimant is not entitled to payment by defendants for the past requested medical expenses itemized in Exhibit 4 which were incurred after October 29, 2014.

I modify the deputy commissioner's ordere that defendants pay claimant's costs of the arbitration proceeding in the amount of \$221.65.

I provide the following analysis for my decision in this matter:

Claimant contends his independent medical evaluation (IME), performed by Farid Manshadi, M.D., should be accepted as the most convincing evidence in this record. However, Dr. Manshadi's opinions lack important foundation and I do not find them to be convincing in this case. First, Dr. Manshadi was not provided pre-existing medical records and he did not review information pertaining to prior low back injuries claimant sustained. Second, at the time of his deposition, Dr. Manshadi was not aware of claimant's subsequent work activities and could not provide an opinion as to whether claimant sustained a subsequent material aggravation of his low back after the August 5, 2014, injury date. (Exhibit B, p. 7 (depo. tr., pp. 25-26))

In fact, claimant testified he sustained a subsequent aggravation at work in June 2015. (Hearing Transcript, p. 84) Dr. Manshadi was not provided all relevant information upon which to formulate his opinions. I therefore find Dr. Manshadi's opinions lack sufficient factual basis upon which to be found convincing in this case and I decline claimant's invitation to rely upon it.

Claimant next contends it was inappropriate for the deputy commissioner to conduct internet research pertaining to the Oswestry disability questionnaire and resulting scores referenced in claimant's medical records. Claimant contends the deputy's citation to internet research was outside the evidentiary record and resulted in prejudice to claimant.

On page three of the arbitration decision, the deputy commissioner noted claimant's Oswestry score was 74 on August 8, 2014, and it had decreased to six as of August 22, 2014. This evidence clearly is within the medical records and evidentiary record.

Claimant's challenge is to the second paragraph on page three of the arbitration decision in which the deputy commissioner finds:

According to the Journal of Physiotherapy, the Oswestry disability questionnaire (ODQ) is used to assess disability with people with lower back issues. The questionnaire is scored from 0-100. A higher Oswestry score is indicative of a higher disability. Scores from 0-20 indicate minimal disability. Journal of Physiotherapy. Oswestry Disability Questionnaire available at [http://www.journalofphysiotherapy.com/article/S0004-9514\(05\)70016-7/pdf](http://www.journalofphysiotherapy.com/article/S0004-9514(05)70016-7/pdf) See also Oswestry Low Back Pain Disability Questionnaire http://www.rehab.msu.edu/files/docs/oswestry_low_back_disability.pdf

This agency has expertise in certain areas and is permitted to utilize that expertise and specialized knowledge in the evaluation of evidence, including interpreting and applying medical evidence. Iowa Code section 17A.14(5). The Iowa appellate courts have acknowledged that this agency may exercise its expertise in this regard. Stone Container Corp. v. Castle, 657 N.W.2d 485 (Iowa 2003). Therefore, the deputy's use of agency expertise was not necessarily erroneous.

However, the deputy's citation to a resource outside the evidentiary record was not necessary. By August 22, 2014, claimant reported being 90 to 95 percent better and he had returned to all work duties without an increase in symptoms. Claimant's pain was reported as 0/10 on that date. (Jt Ex. 1, p. c-6) Claimant did not seek additional treatment between August 22, 2014, and October 29, 2014.

Although he denied using the "baseline" language (Tr., p. 61), by October 29, 2014, claimant was reporting to medical providers that he was "back to baseline" and that he felt he could do the full duties of his job. (Jt. Ex. 1, p. d-1) The October 29, 2014, examination was documented as "normal." (Jt. Ex. 1, p. d-1) In his deposition, claimant conceded that the October 29, 2014, exam notes were accurate. (Ex. A, p. 13, depo., pp. 39-40)

Claimant returned to his full duty work activities at defendant-employer after the October 29, 2014, appointment. He continued to work full duty from October 2014, through June 2015, when he sustained a new aggravation of his low back. The most convincing evidence in the evidentiary record is that claimant sustained a temporary aggravation of his low back on August 5, 2014. He recovered from that injury and was capable of performing his full work duties by October 29, 2014.

Claimant failed to prove he sustained permanent disability as a result of the August 5, 2014, work injury. The deputy commissioner's citation to Oswestry scores and internet research was not necessary to reach this finding or conclusion. For the sake of clarity, I have neither reviewed nor considered the deputy commissioner's internet research. I do not rely upon the deputy commissioner's citation or research pertaining to Oswestry scores. Yet, I still affirm the deputy commissioner's findings of fact and conclusions that claimant failed to prove he sustained permanent disability as a result of the August 5, 2014, work injury. Therefore, I conclude that the arbitration decision's findings and conclusions with respect to the claim for permanent disability should be affirmed.

Defendants cross-appealed on the assessment of costs. The deputy commissioner assessed costs against defendants because some benefits were awarded to claimant. Defendants point out in their appeal brief that the credit to which they are entitled is sufficient to fully exhaust the benefit award. Defendants contend they actually prevailed on all issues and they contend it was inappropriate for the deputy commissioner to assess costs against defendants as the prevailing party.

Costs are assessed at the discretion of this agency. Iowa Code section 86.40. Typically, costs are not assessed against a prevailing party without some justification for doing so. While claimant obtained an award of benefits in this case, he will receive nothing above the benefits voluntarily paid by defendants prior to the arbitration hearing. I therefore conclude defendants are the prevailing party in this case. I concur with defendants that they should not be taxed with any of claimant's costs in the underlying arbitration proceeding. I therefore modify the award of costs and I order the parties to pay their own costs of the arbitration proceeding.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 12, 2018, is affirmed as to the issues of temporary disability, permanent disability and medical benefits and it is modified as to the assessment of costs.

Defendants shall pay claimant healing period benefits from August 6, 2014, through August 14, 2014, at the weekly rate of six hundred twenty-six and 05/100 dollars (\$626.05).

Claimant shall take nothing in the way of permanent partial disability benefits.

Defendants shall receive a credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum with as set forth in Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, the parties shall pay 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 11th day of June, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Stephen D. Lombardi
Katrina M. Phillip
Attorneys at Law
5000 Westown Pkwy., Ste. 440
West Des Moines, IA 50266
sdlombardi@aol.com
katrina.phillip8@gmail.com

James W. Bryan
Attorney at Law
1089 Jordan Creek Pkwy., Ste. 360
West Des Moines, IA 50266
jbryan@travelers.com