

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRADLEY S. WOODS,

Claimant,

vs.

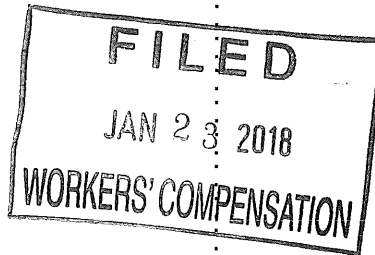
CODY'S, INC.,

Employer,

and

SENTINEL INSURANCE CO., LTD.,

Insurance Carrier,
Defendants.



File No. 5057998

RULING ON

MOTION FOR ORDER

NUNC PRO TUNC

AND REHEARING DECISION

On January 17, 2018, the undersigned issued an arbitration decision in this case. On January 18, 2018, claimant filed a motion for order nunc pro tunc. Specifically, claimant seeks award of an independent medical evaluation fee.

Review of the arbitration decision discloses that I included this issue in the disputed issues. On page 17 of the arbitration decision, the undersigned noted that claimant asserted a claim for reimbursement of his independent medical evaluation expense pursuant to Iowa Code section 85.39. However, the undersigned included no additional conclusions of law and never applied his findings of fact to the law. Similarly, the undersigned failed to include any order pertaining to the requested independent medical evaluation fee.

Claimant's request that this be corrected as a nunc pro tunc order is not proper. This was more than a scrivener's error. The undersigned clearly identified this issue but failed to analyze the issue properly or thoroughly in the arbitration decision. Therefore, claimant's request to address this issue as an order nunc pro tunc will be denied.

However, claimant's motion will be accepted as a timely request for rehearing pursuant to 876 IAC 4.24. It is apparent that the undersigned identified the independent medical evaluation as a disputed issue, made findings of fact, and failed to complete the analysis with conclusions of law or application of the law to the facts as found. Therefore, claimant's request for rehearing on this issue is appropriate and is granted.

The following analysis should be included within the conclusions of law section of the arbitration decision:

Mr. Woods asserted a claim for reimbursement of his independent medical evaluation expense pursuant to Iowa Code section 85.39. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Having found that the authorized treating physician, Dr. Lawler, provided a permanent impairment rating in August 2015 and that claimant subsequently obtained an evaluation through Dr. Kuhnlein in June 2017, I conclude that claimant qualifies for an independent medical evaluation pursuant to Iowa Code section 85.39. Des Moines Regional Transit Authority v. Young, 867 N.W.2d 839, 843 (Iowa 2015). Of course, defendants are only responsible for reimbursement of reasonable fees associated with such an evaluation. In this case, I made specific findings of fact that the fees charged by Dr. Kuhnlein for his evaluation were reasonable. (Arbitration Decision, page 13). Therefore, I conclude that claimant has established entitlement to reimbursement of Dr. Kuhnlein's charges pursuant to Iowa Code section 85.39.

THEREFORE, IT IS ORDERED:

Claimant's motion is denied as a motion for an order nunc pro tunc.

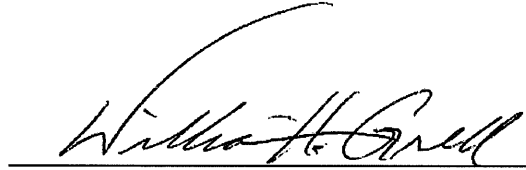
Claimant's motion is considered as a motion for rehearing pursuant to 876 IAC 4.24.

Claimant's motion for rehearing is sustained.

The conclusions of law and application of the law to the facts, as provided above, are incorporated into the arbitration decision.

In addition to the orders rendered in the arbitration decision, defendants are ordered to reimburse claimant's independent medical evaluation fee totaling five thousand one hundred seventy-two and 50/100 dollars (\$5,172.50).

Signed and filed this 23rd day of January, 2018.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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