

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

APRIL HALVERSON,

Claimant,

vs.

DYERSVILLE FOOD BANK, INC.,

Employer,

and

DONEGAL MUTUAL INS. CO., d/b/a
LEMARS INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

JUN 29 2017

WORKERS' COMPENSATION

File No. 5048905

A P P E A L

D E C I S I O N

Head Note Nos: 1100, 1804, 1803,
2501, 3000

Defendants Dyersville Food Bank, Inc., employer, and its insurer, Donegal Mutual Ins. Co., d/b/a LeMars Insurance Company, appeal from an arbitration decision filed on December 1, 2015. Claimant April Halverson responds to the appeal. The case was heard on September 9, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 30, 2015.

In the arbitration decision, the deputy commissioner found claimant sustained an injury on June 1, 2013, which arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found the work injury caused permanent material aggravations of claimant's pre-existing low back condition and claimant's pre-existing depression. The deputy commissioner awarded claimant healing period benefits commencing June 2, 2013, through June 1, 2014. The deputy commissioner awarded claimant permanent total disability benefits commencing June 1, 2014. The deputy commissioner found claimant's correct weekly benefit rate for healing period benefits is \$164.66, and claimant's correct weekly benefit rate for permanency benefits is \$185.49. The deputy commissioner found claimant is not entitled to penalty benefits. The deputy commissioner found claimant is entitled to payment by defendants for the medical costs associated with past and ongoing treatment of claimant's low back and mental health issues related to the work injury. The deputy commissioner found claimant is not entitled to payment by defendants for the independent medical evaluation (IME) fee of Mark Mittauer, M.D. The deputy commissioner found claimant is

entitled to payment by defendants of \$585.00 of the fee charged by Kent Jayne, M.A., for his vocational assessment report. The deputy commissioner also ordered defendants to reimburse claimant for her filing fee and service fee.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained an injury on June 1, 2013, which arose out of and in the course of claimant's employment with defendant-employer. Defendants assert the deputy commissioner erred in finding claimant's depression was materially aggravated by the work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to healing period benefits and in finding claimant is entitled to permanent total disability benefits. Defendants assert the deputy commissioner correctly found claimant is not entitled to reimbursement for the cost of Dr. Mittauer's IME.

Claimant asserts 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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on December 1, 2015, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant sustained an injury on June 1, 2013, which arose out of and in the course of claimant's employment with defendant-employer.

I affirm the deputy commissioner's finding that the work injury caused permanent material aggravations of claimant's pre-existing low back condition and claimant's pre-existing depression.

I affirm the deputy commissioner's finding that claimant is entitled to permanent total disability benefits.

I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for healing period benefits is \$164.66, and claimant's correct weekly benefit rate for permanency benefits is \$185.49.

I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits.

I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the medical costs associated with past and ongoing treatment of claimant's low back and mental health issues related to the work injury.

I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for Dr. Mittauer's IME fee.

I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of \$585.00 of the fee charged by Kent Jayne, M.A., for his vocational assessment report.

I affirm the deputy commissioner's order that defendants reimburse claimant for her filing fee and service fee.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I modify the deputy commissioner's finding that claimant is entitled to healing period benefits commencing June 2, 2013, through June 1, 2014, and permanent total disability benefits commencing June 1, 2014, with the following analysis:

Pursuant to Iowa Code section 85.34(3), when an injury causes permanent total disability, permanent total disability benefits are to be paid from the date of injury. The injured worker is not entitled to temporary disability benefits. In this case, claimant's injury date is June 1, 2013. Claimant is entitled to permanent total disability benefits from the date of injury and continuing during the period of permanent total disability. Claimant is not entitled to healing period benefits from June 2, 2013, through June 1, 2014.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 1, 2015, is MODIFIED as follows:

Defendants shall pay claimant permanent total disability benefits at a rate of one hundred eighty-five and 49/100 dollars (\$185.49) commencing June 1, 2013, and continuing during the period of permanent total disability.

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

Defendants shall be given credit for all benefits previously paid.

Defendants shall pay any and all of claimant's past medical expenses associated with the injuries that are causally related to the work injury.

Defendants shall provide ongoing medical care for claimant for the injuries that are causally related to the work injury.

Pursuant to rule 876 IAC 4.33, defendant shall reimburse claimant for the following costs of the arbitration proceeding: the filing fee, the service fee, and five hundred eighty-five and 00/100 dollars (\$585.00) of Kent Jayne's fee for his vocational assessment report, and defendants 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 this 29th day of June, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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