BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACK BURK, Claimant, vs. ALLEGIS GROUP, INC. d/b/a AEROTEK, Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	FILED JAN 29 2019 WORKERS' COMPENSATION File No. 5054104 APPEAL DECISION Head Note Nos: 1108; 1804; 2501; 5-9998

Defendants Allegis Group, Inc. d/b/a Aerotek, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed June 21, 2017. Claimant Jack Burk responds to the appeal. The case was heard on April 7, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 29, 2016.

In the arbitration decision, the deputy commissioner found claimant carried his burden to prove that his ongoing pulmonary/respiratory conditions, right lower extremity symptoms, and mental health conditions were causally related to the stipulated May 16, 2012, work injury. However, the deputy commissioner found there was insufficient evidence to establish a causal connection between claimant's work injury and his alleged left leg condition and neurological/cognitive deficits. Still, the deputy commissioner determined claimant was permanently and totally disabled due to the work injury. In doing so, the deputy commissioner found claimant to be a credible witness.

The deputy commissioner determined defendants were responsible for payment of claimant's medical expenses relating to claimant's pulmonary/respiratory conditions, right lower extremity condition, and mental health conditions. The deputy commissioner instructed claimant to update Exhibit 29 and serve defendants with an updated itemization of any outstanding medical expenses relating to claimant's compensable conditions.

On appeal, defendants argue the deputy commissioner erred by finding claimant to be a credible witness, by finding a causal connection between claimant's work injury

and his mental health and right leg conditions (and thereby ordering defendants to pay the medical expenses relating to those conditions), and by finding claimant to be permanently and totally disabled. Defendants assert the only compensable condition is claimant's pulmonary/respiratory condition and defendants assert claimant is not permanently and totally disabled due to that condition. Defendants also request another updated itemization of the outstanding medical expenses relating to claimant's compensable conditions.

Claimant responds to the appeal and contends the decision should be affirmed in its entirety.

I 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 June 21, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of 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 meet his burden to prove a causal relationship between his work injury and his alleged left leg condition, and I affirm the deputy commissioner's finding that claimant failed to prove his work injury caused a stand-alone diagnosis of neurological and/or cognitive deficits. However, I also affirm the deputy commissioner's finding that claimant carried his burden to prove that his pulmonary/respiratory conditions, right lower extremity condition, and mental health conditions are casually related to the work injury. I affirm the deputy commissioner's finding that claimant is permanently and totally disabled as a result of those work-related conditions.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. As mentioned, defendants assert the deputy commissioner erred in finding claimant to be credible. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed claimant's credibility in this matter. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's finding that claimant was credible.

Regarding claimant's claimed medical expenses, I affirm the deputy commissioner's finding that defendants are responsible for the medical expenses that

are causally related to claimant's pulmonary/respiratory conditions, right lower extremity condition, and mental health condition. In the arbitration decision, the deputy commissioner instructed claimant to provide an updated itemization of the outstanding medical expenses relating to claimant's compensable conditions and any authorized care that remained unpaid. In compliance with the arbitration decision, claimant served an updated medical bill summary on defendants on July 12, 2017.

On appeal, defendants request another updated itemization of claimant's outstanding medical expenses, including the name of provider, date of service, amount billed, amount owed, amounts paid by insurance, and current supporting documentation. I find defendants' request to be reasonable and appropriate given the condition of claimant's original Exhibit 29, which the deputy commissioner fittingly described as "indecipherable," and given the time that has passed since the underlying arbitration decision was filed. Claimant is again instructed to update his medical bill summary and serve defendants with an updated itemization of outstanding expenses relating to treatment for his compensable conditions and/or any authorized care that remains unpaid.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues in their entirety with my additional instruction to claimant with respect to his claimed medical expenses.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 21, 2017, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits at the weekly rate of one thousand three hundred twenty-seven and 48/100 dollars ($1,327.48), commencing May 17, 2012, and continuing during the period claimant remains permanently and totally disabled.

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum, together with interest from the date of this appeal decision, at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the October 21, 2015, date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

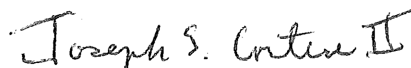
Defendants are found responsible for claimant's medical expenses as set forth in the decision.

Claimant shall update his medical bill summary and he shall serve defendants with an updated itemization of all outstanding expenses relating to treatment for his compensable conditions and/or any authorized care that remains unpaid.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimants costs of the arbitration proceeding, 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 on this 29th day of January, 2019.



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WORKERS' COMPENSATION
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