BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY E. CHRISTIANSEN, JR.,

Claimant,

vs.

MITAS TIRE NORTH AMERICA, INC.,

Employer,

and

GRANITE STATE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5054051

APPEAL

DECISION

Head Note Nos: 1402.30; 1803; 2503

Defendants Mitas Tire North America, Inc., employer, and Granite State Insurance Company, insurance carrier, appeal from an arbitration decision filed on September 12, 2017. Claimant Gary E. Christiansen, Jr., cross-appeals. The case was heard on March 7, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 14, 2018.

In the arbitration decision, the deputy commissioner found claimant sustained an injury that arose out of an in the course of his employment on June 30, 2013. More specifically, the deputy commissioner found claimant sustained a permanent aggravation of his pre-existing low back condition, resulting in a 20 percent industrial disability. The deputy commissioner also determined defendants were responsible for payment of medical bills from Brietbach Chiropractic and Charles City Family Health. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding. In the arbitration decision, the deputy commissioner specifically noted he found claimant to be "generally credible."

On appeal, defendants assert the deputy commissioner erred in finding claimant to be a generally credible witness. Defendants also assert the deputy commissioner erred in his determination that claimant sustained a work-related injury on June 30, 2013. Alternatively, defendants assert any such injury resulted in only a temporary aggravation of claimant's pre-existing back condition. Lastly, defendants assert the deputy commissioner erred by finding defendants to be responsible for any of claimant's medical bills or case costs.

On cross-appeal, claimant asserts the deputy commissioner's award of a 20 percent industrial disability is the minimum to which claimant is entitled. Claimant did not appeal the deputy commissioner's finding that there was insufficient evidence to find defendants responsible for any additional medical expenses as set out in Claimant's Exhibit 10. (See Claimant's Appeal Brief, p. 19)

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

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 September 12, 2017, is affirmed in part and it is reversed in part.

With respect to claimant's credibility, while I performed a de novo review of the record, I give considerable deference to the credibility findings, expressly or impliedly made, 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 generally credible.

I also affirm the deputy commissioner's finding that claimant sustained a work-related injury on June 30, 2013, that caused a permanent aggravation of claimant's pre-existing back condition. I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability as a result of the work injury. Finally, I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding. I find the deputy commissioner provided a well-reasoned analysis of those issues, and I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues in their entirety.

However, for the reasons that follow, I reverse the deputy commissioner's determination that defendants are responsible for payment of claimant's medical bills from Charles City Family Health on April 4, 2016, and Brietbach Chiropractic.

The deputy commissioner correctly noted that the treatment received by claimant at Charles City Family Health on April 4, 2016, and at Brietbach Chiropractic was not authorized. When a claimant abandons the protections of Iowa Code section 85.27 and seeks unauthorized medical care, the employer is not liable for those medical charges unless the claimant can establish that the unauthorized medical care is beneficial and provides a more favorable medical outcome than would likely have been achieved through authorized medical care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

In this case, the deputy commissioner found the April 4, 2016 appointment at Charles City Family Health was related to claimant's work-related back condition because it involved a discussion about claimant possibly returning to work. While that may be true, the deputy commissioner did not make any findings about whether the

care was reasonable or provided a more favorable medical outcome than would have likely been achieved through authorized medical care.

Ultimately, the April 4, 2016, appointment changed nothing with respect to claimant's back condition. No treatment was administered, no additional treatment was recommended, and David Schrodt, M.D., essentially reaffirmed his opinions about whether claimant should be working for defendant-employer. (Joint Exhibit 5, p. 108) For these reasons, there is insufficient evidence for me to find the April 4, 2016 appointment at Charles City Family Health provided a more favorable medical outcome than would have likely been achieved through authorized medical care.

Regarding the unauthorized treatment at Brietbach Chiropractic, the deputy commissioner stated claimant testified he found chiropractic care to be helpful. While claimant did indicate he found some relief from his chiropractic treatment (see Hearing Transcript, pp. 23-24), it is not clear whether these appointments were causally related to the work injury. For example, at claimant's appointments in June and July of 2015, claimant complained of lumbar pain, but he also complained of, and received adjustments for, neck pain. (Jt. Ex. 4, pp. 75-76) Further, the January 15, 2016, appointment was necessitated by a non-work-related slip on the ice, and claimant made the March 21, 2016, appointment after he slipped carrying luggage into his home. (Jt. Ex. 4, pp. 77-78; Tr., p. 46) For these reasons, I find there is insufficient evidence that the appointments from Brietbach Chiropractic were causally related to claimant's work injury.

Based on my findings, I conclude claimant did not satisfy his burden to prove the unauthorized appointment with Dr. Schrodt on April 4, 2016, was reasonable and beneficial. See Bell Bros.,779 N.W.2d at 206. I also conclude claimant did not satisfy his burden that the care received at Brietbach Chiropractic was causally related to his work injury. See Iowa Code section 85.27. The deputy commissioner's findings, conclusions, and analysis with respect to the medical charges from Charles City Family Health on April 4, 2016, and Brietbach Chiropractic are therefore respectfully reversed.

The deputy commissioner found defendants responsible only for the medical charges from Charles City Family Health on April 4, 2016, and for the medical charges from Brietbach Chiropractic. Thus, having reversed the deputy commissioner's award of those medical charges, I conclude defendants are not responsible for any of the medical charges set out in Claimant's Exhibit 10.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 12, 2017, is affirmed in part and is reversed in part.

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred ninety-one and 71/100 dollars ($391.71) commencing on the stipulated commencement date of November 26, 2013, until all benefits are paid in full.

Defendants shall receive a credit for all weekly benefits paid to date as stipulated in the hearing report.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018)

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and the parties shall split 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 18th day of March, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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