

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAVERNE G. CLARK,

Claimant,

vs.

CONCRETE CENTRAL, L.L.C.,

Employer,

and

HASTINGS MUTUAL INSURANCE
CO.,

Insurance Carrier,
Defendants.

FILED

DEC 28 2017

WORKERS' COMPENSATION

File No. 5049601

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30; 1402.40; 1801;
1803; 2501; 2502; 2907;
5-9998

Claimant Laverne G. Clark appeals from an arbitration decision filed on May 17, 2016. Defendants Concrete Central, L.L.C., employer, and its insurer, Hastings Mutual Insurance Co., respond to the appeal. The case was heard on February 9, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 10, 2016.

The deputy commissioner found claimant carried his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer on November 17, 2014, as alleged. However, the deputy commissioner found claimant failed to prove anything more than a brief, temporary aggravation of a pre-existing back condition. The deputy commissioner found claimant failed to carry his burden of proof he is entitled to temporary disability benefits and the deputy commissioner found claimant failed to carry his burden of proof he is entitled to permanent disability benefits. The deputy commissioner found claimant is not entitled to penalty benefits. The deputy commissioner found claimant is entitled to payment by defendants of requested past medical expenses. The deputy commissioner found claimant is not entitled to alternate medical care in the form of ongoing treatment for the alleged injury. The deputy commissioner found pursuant to Iowa Code section 85.39 that claimant is not entitled to payment by defendants for the charge for the independent medical examination (IME) of Robert Kreiter, M.D., performed on October 7, 2015. The deputy commissioner also ordered the parties to bear their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove anything more than a brief, temporary aggravation of claimant's pre-existing back condition. Claimant asserts the deputy commissioner erred in finding claimant failed to carry his burden of proof he is entitled to temporary disability benefits and in finding claimant failed to carry his burden of proof he is entitled to permanent disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to penalty benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to alternate medical care in the form of ongoing treatment for the alleged injury. Claimant asserts the deputy commissioner erred in finding that pursuant to Iowa Code section 85.39, claimant is not entitled to payment by defendants for the charge for Dr. Kreiter's IME. Claimant also asserts the deputy commissioner erred in failing to tax claimant's costs of the arbitration proceeding against defendants.

Defendants assert 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.

I have 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 May 17, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 while claimant carried his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer on November 17, 2014, as alleged, claimant failed to prove anything more than a brief, temporary aggravation of a pre-existing back condition. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he is entitled to temporary disability benefits and I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof he is entitled to permanent disability benefits. 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 of requested past medical expenses. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care in the form of ongoing treatment for the alleged injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to payment by defendants for the charge for Dr. Kreiter's IME. I affirm the deputy commissioner's order that the parties bear their own costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 17, 2016, is affirmed in its entirety.

Defendants shall reimburse claimant for all medical expenses paid directly by claimant to medical providers and shall either pay claimant, reimburse any third-party payor, or pay medical providers directly for all past medical expenses outlined in the medical expense itemization attached to the hearing report.

Pursuant to rule 876 IAC 4.33, the parties shall bear 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 28th day of December, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Matthew A. Leddin
Attorney at Law
5108 Jersey Ridge Rd.
Davenport, IA 52807
matt@soperlaw.com

Sara A. Lamme
Tiernan T. Siems
Attorneys at Law
10330 Regency Parkway Drive
Omaha, NE 68114-3761
slamme@eslaw.com
tsiem@eslaw.com