

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GRACE COZAD,

Claimant,

vs.

RUSSELL CORPORATION,

Employer,

and

AMERICAN HOME ASSURANCE,

Insurance Carrier,
Defendants.

File No. 5015753

A P P E A L

D E C I S I O N

FILED

JAN 29 2016

WORKERS' COMPENSATION

Head Note No.: 1803

Claimant Grace Cozad appeals from a review-reopening decision filed on October 15, 2014. The review-reopening hearing was held on February 6, 2014, and this case was considered fully submitted on March 17, 2014, in front of the deputy workers' compensation commissioner.

This matter has a rather long and complicated history. Claimant sustained a work-related low back injury on November 10, 2004. Claimant filed her arbitration petition on May 23, 2005. The arbitration hearing was held on May 16, 2006, and the arbitration decision was issued on October 30, 2006. In the arbitration decision, the deputy commissioner found that claimant had not sustained permanent disability as a result of the work injury. Claimant appealed to the commissioner and that decision was affirmed on February 27, 2008.

Claimant appealed to District Court, and on January 30, 2009, this matter was remanded back to the agency for additional clarification. On June 15, 2010, the commissioner filed a remand decision with additional explanation, as requested by the District Court, and found that claimant would take nothing. See Exhibit V, page 9.

Claimant appealed to the District Court again, and on February 22, 2011, the court reversed the agency decision and remanded the case back to the agency for an award of permanent disability benefits.

Defendants appealed, and on January 19, 2012, the Court of Appeals affirmed the District Court. See Exhibit X, page 15. On July 26, 2012, the commissioner filed a decision awarding claimant permanent total disability benefits with a commencement date of November 10, 2004, the date of injury.

On September 25, 2012, defendants filed a review-reopening petition. As stated above, the review-reopening hearing was held on February 6, 2014, and the review-reopening decision was filed on October 15, 2014.

In the review-reopening decision, the deputy commissioner found that defendants carried their burden of proof to establish that claimant has sustained a change of condition which warrants a lowering of the award of permanent total disability contained in the July 26, 2012, remand decision. The deputy commissioner found that because of the change in condition, claimant is entitled to 35 percent industrial disability for the work injury of November 10, 2004, which entitles claimant to 175 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found that defendants are entitled to a credit for all PPD benefits paid, which was 482 weeks as of the date of the review-reopening hearing. The deputy commissioner also found that claimant failed to prove she is entitled to payment of the medical charges and other costs claimed in the review-reopening action.

Claimant asserts on appeal that the deputy commissioner erred in finding that defendants carried their burden of proof to establish that claimant has sustained a change of condition which warrants a lowering of the award of permanent total disability. Claimant also asserts that the deputy commissioner erred in finding that claimant failed to prove she is entitled to payment of the medical charges and other costs claimed in the review-reopening action.

Defendants assert on appeal that the review-reopening decision should be affirmed in its entirety.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner in the review-reopening decision.

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on October 15, 2014, which relate to issues properly raised on intra-agency appeal with the following additional analysis:

The deputy commissioner provided sufficient analysis of all issues raised in the review-reopening proceeding. I concur with the deputy commissioner's findings of fact and conclusions of law pertaining to all of these issues. I concur with the deputy commissioner's finding that defendants carried their burden of proof to establish that claimant has sustained a change of condition which warrants a lowering of the award of permanent total disability. I concur with the deputy commissioner's finding that claimant

is entitled to 35 percent industrial disability for the work injury of November 10, 2004, which entitles claimant to 175 weeks of PPD benefits. I concur with the deputy commissioner's finding that defendants are entitled to a credit for all PPD benefits paid, which was 482 weeks as of the date of the review-reopening hearing. I also concur with the deputy commissioner's finding that claimant failed to prove she is entitled to payment of the medical charges and other costs claimed in the review-reopening action. Therefore, I adopt the deputy commissioner's findings, conclusions and analysis regarding all of these issues.

Some of the findings by the deputy commissioner in the review-reopening decision, including the finding that claimant currently is capable of performing employment in the competitive labor market, were based on the deputy's finding that claimant is not a credible witness because of claimant's criminal conduct in 2008 while employed by Orscheln, which led to 149 felony charges (Ex. I, pp. 68, 69) and which resulted in convictions on four counts of forgery and one count of theft. (Tr. pp. 63-64; Ex. I, pp. 70-75; Ex. R, p. 11) The deputy commissioner also determined claimant is not credible because of documented dishonest responses claimant gave in her application for employment submitted to New Hope Village, wherein she stated she left her prior employment with Orscheln for better pay when, in fact, she was fired from Orscheln for her criminal conduct. (Tr. pp. 63-64) While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision of October 15, 2014, is AFFIRMED in its entirety:

Defendants shall pay claimant one-hundred seventy-five (175) weeks of permanent partial disability benefits for the work injury of November 10, 2004.

Defendants shall receive credit for four-hundred eighty-two (482) weeks of compensation paid to claimant as of the date of the review-reopening hearing, paid at the weekly rate of three-hundred fifty-three and 77/100 dollars (\$353.77), as stipulated by the parties.

Defendants shall receive credit for all additional benefits paid during the pendency of this proceeding.

Accrued benefits shall be paid in a lump sum with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury filed as directed by this agency.

Costs of the review-reopening action and the costs of this appeal are taxed to the claimant pursuant to rule 876 IAC 4.33.

Signed and filed this 29th day of January, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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