

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH MOYER,

Claimant,

vs.

INTERSTATE POWER &amp; LIGHT CO.,

Employer,  
Self-Insured,  
Defendant.

File No. 5047944.01

A P P E A L

D E C I S I O N

: Headnotes: 1108.20; 1402.20; 1402.30;  
: 1802; 1803.1; 1804; 2204;  
: 2206; 2403; 2501; 2701; 2905;  
: 2907; 5-9998

Defendant Interstate Power & Light Company, self-insured employer, appeals from a review-reopening decision filed on October 5, 2021. Claimant Joseph Moyer responds to the appeal. The case was heard on January 11, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 1, 2021.

On March 20, 2012, claimant sustained the work-related injury which is at issue in this matter. In the underlying arbitration decision filed in this case on March 16, 2017, a deputy commissioner: (1) found claimant failed to prove the work injury was a cause of permanent disability of his right knee, right hip, or low back; (2) found claimant established he sustained permanent impairment of 15 percent of his right lower extremity, as opposed to his right foot, entitling claimant to receive 33 weeks of permanent partial disability benefits at the weekly rate of \$866.74, commencing on November 8, 2012; (3) ordered defendant to pay claimant's medical expenses and medical mileage; (4) awarded claimant alternate medical care with Kobusch Chiropractic for his low back and right hip pain caused by changes in his gait; (5) found while claimant established a second qualifying loss of his right lower extremity, he failed to prove he sustained a first qualifying loss of his left knee, and therefore, claimant was not entitled to receive benefits from the Second Injury Fund of Iowa; and (6) ordered defendant to pay a portion of claimant's costs.

Claimant appealed, and defendant cross-appealed the arbitration decision. The undersigned affirmed the arbitration decision in its entirety. Claimant filed a petition for judicial review. On June 28, 2019, the Iowa District Court for Polk County dismissed the petition for judicial review and affirmed the undersigned's appeal decision. The matter was not appealed from the district court and the decision became final.

On January 27, 2020, claimant filed a review-reopening petition asserting that after the arbitration decision was filed, claimant sustained a change of condition based on injuries to his right foot, right knee, right leg, right hip, low back, and mental health,

as a result of the March 20, 2012, work injury. Claimant asserted that due to the alleged physical change of condition, he is now entitled to receive permanent total disability benefits for the work injury. Claimant asserted entitlement to healing period benefits from February 14, 2019, through October 16, 2020. Claimant asserted entitlement to payment by defendant of the medical charges itemized in Exhibit 1. Claimant asserted entitlement to alternate medical care for treatment of his mental health condition.

Defendant asserted that claimant's claim of a change of condition was barred by claim preclusion, issue preclusion or by res judicata. Defendant asserted the evidence would not support claimant's contention of a change in his physical or mental condition or claimant's contention that he is now permanently and totally disabled. Defendant asserted claimant is not entitled to receive additional healing period benefits, payment of the medical benefits itemized in Exhibit 1, or alternate medical care.

The review-reopening petition proceeded to hearing before another deputy workers' compensation commissioner on January 11, 2021.

On October 5, 2021, the deputy commissioner issued a review-reopening decision finding defendant failed to prove claimant's claim of a change of his physical and mental condition was barred by claim preclusion, issue preclusion or by res judicata. The deputy commissioner found claimant carried his burden of proof to establish he sustained a change of condition of both his physical and mental condition related to the work injury after the arbitration decision was filed. The deputy commissioner found that as a result of the change in claimant's physical and mental condition, claimant is now entitled to receive permanent total disability benefits for the work injury commencing on January 27, 2020, the date of filing of the review-reopening petition. The deputy commissioner found claimant is entitled to receive additional healing period benefits from February 14, 2019, through January 26, 2020. The deputy commissioner found claimant is entitled to payment by defendant of the medical charges itemized in Exhibit 1. The deputy commissioner found claimant is entitled to alternate medical care for treatment of his mental health condition.

Defendant asserts on appeal that the deputy commissioner erred in finding defendant failed to prove claimant's claim of a change of his physical and mental condition was barred by claim preclusion, issue preclusion or by res judicata. Defendant asserts the deputy commissioner erred in finding claimant proved he sustained a change of condition of both his physical and mental condition related to the work injury after the arbitration decision was filed. Defendant asserts the deputy commissioner erred in finding that as a result of the change in claimant's physical and mental condition, claimant is now entitled to receive permanent total disability benefits for the work injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive additional healing period benefits. Defendant asserts the deputy commissioner erred in finding claimant is entitled to payment by defendant of the medical charges itemized in Exhibit 1. Defendant asserts the deputy commissioner

erred in finding claimant is entitled to alternate medical care for treatment of his mental health condition.

Claimant asserts on appeal that the review-reopening 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 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, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on October 5, 2021, 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 review-reopening 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 defendant failed to prove claimant's claim of a change of his physical and mental condition is barred by claim preclusion, issue preclusion or by res judicata. I affirm the deputy commissioner's finding that claimant proved he sustained a change of condition of both his physical and mental condition related to the work injury after the arbitration decision was filed. I affirm the deputy commissioner's finding that as a result of the change in claimant's physical and mental condition, claimant is now entitled to receive permanent total disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive additional healing period benefits from February 14, 2019, through January 26, 2020. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant of the medical charges itemized in Exhibit 1. I affirm the deputy commissioner's finding that claimant is entitled to alternate medical care for treatment of his mental health condition.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues.

#### ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed in this matter on October 5, 2021, is affirmed in its entirety.

Defendant shall pay Claimant healing period benefits at the weekly rate of eight hundred sixty-six and 74/100 dollars (\$866.74) from February 14, 2019, until January 26, 2020.

Defendant shall pay the Claimant permanent total disability benefits at the weekly rate of eight hundred sixty-six and 74/100 dollars (\$866.74), from January 27, 2020, to the present and into the future during the period of the claimant's continued disability.

Defendant shall receive credit for all benefits paid to date.

Defendant 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).

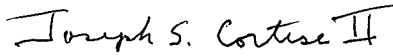
Defendant is responsible for the medical bills set forth in Exhibit 1, totaling six thousand seven hundred forty-five and 00/100 dollars (\$6,745.00) and all causally connected medical bills.

Claimant is entitled to alternate care for his mental health condition to be paid by defendant, including psychotherapy and psychiatric care with Corfman and Dr. Peroski, and all future causally connected care for claimant's mental health condition.

Pursuant to rule 876 IAC 4.33, defendant 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 9<sup>th</sup> day of March, 2022.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Mark Sullivan (via WCES)

James Peters (via WCES)