

NHOUY XAYAVONGCHANH,	:	
Claimant,	:	File No. 5008904
vs.	:	A P P E A L
PDI,	:	D E C I S I O N
Employer,	:	
Self-Insured,	:	
Defendant.	:	

While I performed a de novo review, I gave considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy commissioner who presided at the hearing. The deputy who presided at the hearing had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. My ability to find the true facts that are affected by witness demeanor and credibility cannot in most instances be expected to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation.

The proposed agency decision awarded to claimant his costs associated with x-rays, an EMG and a nerve study test that were performed at the request of the

independent medical examiner for claimant, Dr. Riggins. It is found that the testing recommended by Dr. Riggins was reasonable and necessary for purposes of the diagnosis and evaluation of claimant's injury which arose out of and in the course of his employment – defendant is responsible for the reimbursement to claimant of these costs. Claimant was entitled to an independent medical examination under Iowa Code section 85.39. In this case defendant consented to the evaluation, but thereafter denied claimant's independent examiner the opportunity to conduct medical testing to verify a diagnosis and treatment recommendations. It is found that defendant cannot deprive a claimant of a full independent evaluation by limiting the independent physician to the evaluation only, thus precluding necessary testing needed to provide a full and well-reasoned evaluation of the injury and its full impact on claimant. This rule does not allow an independent medical examiner under Iowa Code section 85.39 to repeat tests which have been previously conducted and which appear to be valid. An independent medical examiner is not free to conduct significant diagnostic testing as part of the independent medical examination unless the examining physician can establish that such additional testing is required in order to complete the evaluation of the degree of impairment or functional limitation. This rule authorizes diagnostic tests necessary to conduct the examination; it does not authorize treatment for the claimant's conditions by the examining physician, or effect a change of care from the authorized treating physicians.

IT IS THEREFORE ORDERED that the arbitration decision is AFFIRMED with the added analysis in this decision.

Defendant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 31st day of March, 2006.

CHRISTOPHER J. GODFREY
WORKERS' COMPENSATION COMMISSIONER

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