BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NHOUY XAYAVONGCHANH,

Claimant, : File No. 5008904

vs. : APPEAL

PDI. : DECISION

Employer, Self-Insured, Defendant.

Pursuant to Iowa Code sections 86.24 and 17A.15 I affirm and adopt as final agency action those portions of the proposed decision of January 26, 2005 that relate to issues properly raised on intra-agency appeal with the following additional analysis:

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.

After a review of the medical records of Keith W. Riggins, M.D., it is evident that Dr. Riggins recognized that claimant's pain complaints were in the left scapula area. Whether aggravation of claimant's acromioclavicular joint arthritis might manifest itself by way of pain in the area of the scapula is a question for the medical experts. Dr. Riggins concluded that claimant's left scapula area pain resulted from his work injury which significantly aggravated his preexisting acromioclavicular arthritis. (Exhibit 2, page 007) Defendant has presented no medical evidence that I can find to be more persuasive on this issue. Further, Dr. Riggins has opined that claimant is restricted from repetitive or persistent utilization of the left upper extremity at or above shoulder level and he should not engage in activities which require forceful pushing or pulling. (Ex. 3, p. 011) Dr. Riggins' restrictions are consistent with claimant's continuing pain and impairment he credibly described as within the area of his shoulder. The industrial disability award properly accounts for the restrictions assigned by Dr. Riggins for the left shoulder.

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 lowa 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 wellreasoned evaluation of the injury and its full impact on claimant. This rule does not allow an independent medical examiner under lowa 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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