

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HEATHER BLASDELL,

Claimant,

vs.

LINNHAVEN, INC.

Employer,

And

UNITED HEARTLAND,

Insurance Carrier,
Defendants.

File No. 5044236

A P P E A L

D E C I S I O N

FILED

MAY 20 2016

WORKERS' COMPENSATION

Head Note Nos.: 1804, 4000.2, 9998

On April 15, 2016, Joseph S. Cortese II, Iowa Workers' Compensation Commissioner, delegated the authority to the undersigned to issue the final agency decision on the intra-agency appeal currently pending before this agency. The decision in this matter shall be the final agency decision.

This was an arbitration case that was heard on October 7, 2014, in Cedar Rapids, Iowa, at the Iowa Department of Workforce Development. The case was deemed fully submitted on November 6, 2014, when the post-hearing briefs were filed. The presiding deputy workers' compensation commissioner issued the arbitration decision on December 12, 2014. The deputy ordered the following:

1. Defendants shall pay claimant permanent total disability benefits at the weekly rate of four-hundred eight and 06/100 dollars (\$408.06) commencing on November 15, 2012, and throughout the period that she remains permanently and totally disabled.
2. Defendants shall pay accrued amounts, if any, in a lump sum and pay interest as Iowa Code section 85.30 provides.
3. Defendants shall receive credit for all benefits previously paid.
4. Defendants shall pay/reimburse for the past medical expenses and mileage as detailed above.

5. Defendants shall pay penalty benefits in the amount of one-thousand five-hundred forty-seven and 00/100 dollars (\$1,547.00).

6. Defendants shall reimburse claimant charges for Dr. Matthew's independent medical examination of one-thousand two-hundred eighty-eight and 50/100 dollars. (\$1,288.50).

7. Pursuant to rule 876 IAC 4.33, defendants pay costs of these proceedings.

8. Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

On December 26, 2014, defendants filed a notice of appeal. They filed a motion for extension of time to file their brief. The motion for extension of time was filed on February 12, 2015. Defendants were granted an extension of time to file their briefs. The extension was granted until March 2, 2015.

Defendants filed their appeal brief on March 2, 2015. Defendants presented three issues on appeal. They were:

1. Whether the deputy erred in finding claimant sustained an injury to the body as a whole.
2. Whether the deputy erred in awarding permanent total disability benefits.
3. Whether the deputy erred in awarding penalty benefits.

Claimant filed her appeal brief on April 22, 2015. Defendants filed a reply brief on May 20, 2015.

The undersigned reviewed the record de novo, including 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.

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on December 12, 2014, which relate to issues properly raised on intra-agency appeal with the following analysis:

The hearing deputy provided a competent and thoughtful analysis of all issues raised in the arbitration proceeding. I concur with the deputy commissioner's findings of fact and conclusions of law pertaining to all of the issues. The deputy provided an in-depth profile of each medical expert's opinion and the deputy explained in detail why she accorded certain weight to one expert's opinion over another expert's opinion.

I concur with the deputy's finding claimant sustained an injury to the body as a whole and the injury resulted in permanent and total disability. The hearing deputy explained in relevant portion how the deputy reached the aforementioned conclusions:

Although claimant has unfortunately experienced stressors in her personal life, which are not related to the work injury, the preponderance of the evidence shows that her current depressive episode is related to the work injury. There is no expert opinion in this case which states that it was the personal stressors in her life that have caused the psychological conditions which have rendered her unable to work. Dr. Mittauer is a board-certified psychiatrist. Dr. Mittauer has opined that the work injury of November 5, 2012, was a substantial contributing factor to major depressive disorder and to her anxiety disorder. Under Dr. Mittauer's care Ms. Blasdell is taking Cymbalta, Zolpidem or Ambien, Topiramate, Lamictal and Xanax. It is Dr. Mittauer's opinion that her psychiatric conditions render her unable to work. Dr. Mittauer has treated Ms. Blasdell over a significant period of time. I do not find any basis to doubt his credentials or opinions. I find his opinions carry substantial weight. Further, his findings fit with those of the other mental health experts in the record. Dr. Mittauer's opinions are consistent with those of Dr. Gersh who also treated claimant over a substantial period of time. (Ex. 2) Even the expert retained by the defendants has stated that the injury aggravated Ms. Blasdell's preexisting mood disorder. Dr. Gallagher opined that the "most obvious diagnosis, for now, is that of chronic pain syndrome associated with a general medical condition and psychological factors, e.g. anxiety and depression. Thus, a somatoform disorder is implied." (Ex. M, p. 14) Dr. Gallagher also states that if she is to resume functional status she will need psychiatric and psychological care. It is apparent that Dr. Gallagher does not believe she is currently at a functional status. (Ex. M, p. 14)

Dr. Gallagher's opinion is based on the assumption that the injury and subsequent pain is accurately reported. Defendants attempt to argue that Ms. Blasdell's pain is not real. I find that the defendants' argument falls short. As Dr. Gallagher points out, Ms. Blasdell's "cooperativeness with the FCE and the MMPI-2 suggest against malingering." (Ex. M, p. 14) Also, both Dr. Kuhnlein and Dr. Gallagher indicate there may be reciprocity between her physical complaints and her psychological distress. Defendants' expert, Dr. Kuhnlein, stated that "[i]t is well known that depression in and of itself can produce physical pain." Further, Dr. Kuhnlein, Dr. Matthew, and Dr. Phisitkul all indicated that Ms. Blasdell sustained permanency and required permanent work restrictions as a result of the right foot injury. As recently as September 16, 2014, Dr. Phisitkul recommended pain management such as lidocaine ointment and non-steroidal anti-inflammatory medications. Clearly, his actions demonstrate he believes her pain is real. (Ex. 1, p. 10) The

preponderance of the evidence does not support defendants' contention that Ms. Blasdell's pain is not real.

Ms. Blasdell also contends that her low back problems are the result of the November 5, 2012, injury. I find that this contention is supported by the preponderance of the evidence. I acknowledge there are inconsistencies in the record regarding whether claimant does or does not have an antalgic gait. I also acknowledge that Ms. Blasdell was experiencing back problems in March of 2012, and that a few weeks after the shopping cart injury claimant was seen in the emergency room for her lower back and buttocks due to falling on some stairs. (Ex. A, p. 21) Additionally, I recognize that Ms. Blasdell had a history of chronic back pain due to a car accident before the work injury. (Ex. A, p. 26) However, considering the opinions of Dr. Mittauer, Dr. Gallagher and even Dr. Kuhnlein, which indicate that the psychological problems generate pain behaviors, I find that her back pain is related to the November 5, 2012, right foot injury and the resulting psychological injury.

(Arbitration Decision, pages 9-10)

It is clear after reading the hearing deputy's arbitration decision, after reviewing the medical evidence and after reviewing the hearing transcript and claimant's deposition testimony, claimant is permanently and totally disabled so long as her psychiatric and psychological issues remain in their current condition. From a mental point of view, claimant is not functional in the competitive labor market. It is the mental component of her condition that is standing in the way of claimant's ability to seek and hold gainful employment.

Defendants, in their brief, challenge the award of penalty benefits in the amount of \$1,547.00. The hearing deputy discusses the issue of penalty benefits on pages 11 and 14 of the arbitration decision. Claimant, in her appeal brief, believes the deputy should have awarded additional penalty benefits above and beyond the amount awarded. I concur with the hearing deputy's findings and conclusions with respect to the issue of penalty benefits pursuant to Iowa Code section 86.13.

Iowa Code section 86.13(4)(a) provides:

4.a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, **up to fifty percent** of the amount of benefits that were denied, delayed or terminated without reasonable or probable cause or excuse. (Emphasis added)

The hearing deputy correctly cited the standard for determining the factors to consider when determining the amount to award as penalty benefits. The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt v. Snap on Tools Corp., 555 N.W.2d 229, 238 (Iowa 1996). The hearing deputy more than adequately addressed all the factors she considered in determining the amount of penalty benefits she deemed appropriate.

ORDER

THEREFORE, IT IS ORDERED: The arbitration decision of December 12, 2014, is AFFIRMED in its entirety.

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

Signed and filed this 10th day of May, 2016.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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