

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MARY DELEHANTY,

Claimant,

vs.

FINLEY HOSPITAL,

Self-Insured Employer,

Defendant.

File Nos.: 5063812, 5063813

APPEAL DECISION

Head Note Nos.: 1402.40, 1800, 1803

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Claimant Mary Delehanty appeals from an arbitration decision filed on March 5, 2021. Defendant Finley Hospital, self-insured employer, responds to the appeal. The case was heard on October 10, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 16, 2020.

On August 19, 2021, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

In the arbitration decision, the deputy commissioner found claimant failed to carry her burden to prove that her alleged ongoing back and neck complaints were causally related to her June 22, 2016 injury (file number 5063813) or that she sustained any permanent disability therefrom. The deputy commissioner likewise found claimant failed to carry her burden to prove that her alleged ongoing mental and brain injury complaints were causally related to her December 18, 2017 injury (file number 5063812) or that she sustained any permanent disability therefrom. As a result, the remaining issues in both file numbers were deemed moot.

On appeal, claimant asserts the deputy commissioner erred in her causation determinations in both file numbers. Claimant asserts she sustained permanent disability as a result of both dates of injury and that she is additionally entitled to alternate medical care and reimbursement for her medical expenses, independent medical examination (IME), and costs.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on March 5, 2021 that relate to the issues properly raised on intra-agency appeal. I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner with additional analysis set forth below regarding claimant's low back claim in file number 5063813.

Turning first to the June 22, 2016 injury date (file number 5063813), I affirm the deputy commissioner's determination that claimant failed to prove her alleged ongoing back and neck complaints are related to the June 22, 2016 incident. With respect to claimant's neck, I affirm the deputy commissioner's findings of fact, conclusions of law, and analysis in their entirety.

With respect to claimant's back, I affirm the deputy commissioner's findings of fact and conclusions of law but offer the following additional findings, conclusions and analysis:

In her report, claimant's independent medical examiner, Robin Sassman, M.D., opined that claimant's ongoing back complaints and resulting permanent impairment were related to the June 22, 2016 incident. In doing so, she offered the following rationale:

While it is true that [claimant] had low back symptoms in 2015, it is notable that these symptoms resolved with conservative treatment. It is also true that she has a history of Fibromyalgia going back to 1998; however, she noted a distinct difference in her symptoms from the injuries related to the 6/22/16 incident and her symptoms from the fibromyalgia. Specifically, she noted that her fibromyalgia symptoms were more of a stiff feeling, while the symptoms she noted after the incident were specifically . . . in the lumbar paraspinous musculature area.

(Claimant's Exhibit 2, p. 20 (emphasis added)).

Even assuming claimant's symptoms from her 2015 work-related incident resolved, however, Dr. Sassman's own report notes that claimant was reporting fibromyalgia-related back pain (not stiffness) to her physician just days before the June 22, 2016 date of injury. (Claimant's Exhibit 2, p. 9) This is significant, because despite claimant's assertion to the contrary, her fibromyalgia-related back complaints in 2015 and 2016 were similar to her complaints after the June 22, 2016 incident.

At a visit with Dr. Isaac in October of 2015, for example, claimant had pain in her back and into her legs. (Joint Exhibit 14, p. 468) Claimant continued to complain of fibromyalgia-related back pain in November of 2015 and again on June 14, 2016, just days before the June 22, 2016 incident at issue in this case. (JE 14, pp. 470-473)

Importantly, at the June 14, 2016 visit, claimant complained of “a lot of pain” in her legs and back. (JE 14, p. 472 (emphasis added))

After claimant was placed at maximum medical improvement for exacerbation caused by the June 22, 2016 incident, claimant continued to have symptoms that were similar to her complaints in the months leading up to her injury. For example, during her treatment with Ms. Bonson, claimant often complained of low back pain with symptoms that extended into her bilateral legs. (JE 8; see e.g., JE 8, p. 220)

Dr. Sassman did not rely on any objective changes or abnormalities in claimant’s back to support her opinion. The reliance solely on claimant’s subjective assertion that her symptoms feel different is concerning given the overlap and similarity between the descriptions of claimant’s fibromyalgia-related back pain in the months—and days—leading up to the June 22, 2016 incident and the descriptions of her symptoms after the incident. For these reasons, I am not persuaded by Dr. Sassman’s causation opinion as it relates to claimant’s back.

Notably, Dr. Sassman’s impairment rating for claimant’s back was based on claimant being placed in DRE lumbar category III. As correctly noted by defendants, to be placed in this category, one of the following criteria must be met: signs of significant radiculopathy; history of herniated disc; or fractures. See AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 15-3, p. 384.

There is no evidence that claimant sustained any herniated discs or fractures as a result of the June 22, 2016 work injury. Claimant’s MRI revealed degenerative changes and disc bulges—not herniations or fractures (JE 6, p. 111-112)—and Dr. Sassman did not go so far as to relate any of these changes to the June 22, 2016 incident. Thus, it is assumed radiculopathy is the criterion on which Dr. Sassman relied to place claimant into DRE category III.

However, Dr. Sassman’s own report provides the following: “[Claimant] notes pain with bending in the low back. She states that it did radiate down the left leg for a time, but this has improved.” (Cl. Ex. 2, p. 17 (emphasis added)). Thus, claimant’s own statement to Dr. Sassman undercuts the basis for Dr. Sassman’s rating. Furthermore, to the extent any radiating pain remained at the time of the examination, claimant was experiencing fibromyalgia-related leg pain in the months and days leading up to the June 22, 2016 incident, and Dr. Sassman failed to address how claimant’s ongoing leg pain (if any) at the time of the IME was different than her pre-existing pain. For these reasons, I am not persuaded by Dr. Sassman’s impairment rating relating to claimant’s back.

Because I am not persuaded by Dr. Sassman’s opinions regarding claimant’s low back, I agree with the deputy commissioner that claimant failed to carry her burden to prove that her ongoing low back complaints are related to the June 22, 2016 incident. Thus, with these additional findings, conclusions, and analysis, I affirm the deputy

commissioner's finding that claimant shall take nothing further with respect to the June 22, 2016 injury date.

In file number 5063812, I affirm the deputy commissioner's findings of fact, conclusions of law, and analysis in their entirety.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed in this matter on March 5, 2021, is affirmed in its entirety with the above-stated additional findings, conclusions of law, and analysis.


File Nos. 5063812, 5063813:

Claimant shall take nothing.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant 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 this 30<sup>th</sup> day of August, 2021.

  
STEPHANIE J. COPLEY  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Mark J. Sullivan (Via WCES)

Edward J. Rose (Via WCES)