

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CASEY R. GRAY,

Claimant,

vs.

ELECTRO MANAGEMENT CORP./
ELECTRIC POWER PRODUCTS, INC.
a/k/a BAKER ELECTRIC, INC.,

Employer,

and

EMC RISK SERVICES,

Insurance Carrier,
Defendants.

FILED

NOV 16 2017

WORKERS' COMPENSATION

File No. 5051688

A P P E A L

D E C I S I O N

Head Note Nos: 1402.20; 1402.30;
2502, 2907; 5-9998

Claimant Casey R. Gray appeals from an arbitration decision filed on May 11, 2016. Defendants Electro Management Corp./Electric Power Products, Inc., a/k/a Baker Electric, Inc., employer, and its insurer, EMC Risk Services, cross-appeal. The case was heard on February 4, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 9, 2016.

The deputy commissioner found claimant failed to carry his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer on September 19, 2014, as alleged. The deputy commissioner found claimant is not credible. Because the deputy commissioner found claimant failed to carry his burden of proof on the issues of causation and compensability regarding claimant's alleged injury, the deputy commissioner found claimant failed to prove entitlement to temporary disability benefits, permanent disability benefits, medical benefits, medical mileage and penalty benefits. Because the deputy commissioner found claimant failed to carry his burden of proof on the issues of causation and compensability, the deputy commissioner found defendants' 90-day notice defense is moot. Pursuant to Iowa Code section 85.39, the deputy commissioner found claimant is not entitled to reimbursement for the independent medical evaluation of Sunil Bansal, M.D., performed on November 6, 2015. The deputy commissioner also ordered the parties to bear their own costs of the arbitration proceeding.

Claimant asserts on appeal that in spite of the finding that claimant is not credible, the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer on September 19, 2014, as alleged. Claimant asserts the deputy commissioner erred in finding claimant failed to prove entitlement to temporary disability benefits, permanent disability benefits, medical benefits, medical mileage and penalty benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendants for Dr. Bansal's IME.

Defendants assert on cross-appeal that the arbitration 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 have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

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 May 11, 2016, 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 arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's finding that claimant is not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's lack of credibility.

I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer on September 19, 2014, as alleged. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to temporary disability benefits, permanent disability benefits, medical benefits, medical mileage and penalty benefits. I affirm the deputy commissioner's finding that defendants' 90-day notice defense is moot. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement for Dr. Bansal's IME. I

affirm the deputy commissioner's order that the parties bear their own costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 11, 2016, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall bear their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed on this 16th day of November, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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