

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TEODORA MONTIEL,

Claimant,

vs.

SMITHFIELD FOODS, INC. f/k/a
FARMLAND FOODS,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,
Defendants.

File No. 5063256

A P P E A L

D E C I S I O N

: Head Note Nos. 1100, 1108, 1803.1; 5-9999

Defendants Smithfield Foods, Inc. f/k/a Farmland Foods, employer, and its insurer, Safety National, appeal from an arbitration decision filed on April 30, 2019. Claimant Teodora Montiel responds to the appeal. The case was heard on March 22, 2018, and it was deemed fully submitted in front of the deputy workers' compensation commissioner on May 21, 2018.

The deputy commissioner found claimant sustained an injury on July 3, 2015, which arose out of and in the course of her employment with defendant-employer. The deputy commissioner found claimant developed an infection that was casually related to the treatment for her work-related injury. The deputy commissioner awarded medical expenses related to the treatment for claimant's infection and likewise awarded healing period benefits from September 11, 2015, through October 3, 2016. The deputy commissioner found claimant's infection and subsequent treatment resulted in scheduled member functional disability of 38 percent of claimant's left lower extremity. The deputy commissioner found claimant was entitled to receive full reimbursement for her independent medical examination (IME).

On appeal, defendants assert the deputy commissioner erred in finding claimant sustained a work-related injury which led to an infection. In the alternative, defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits, and in finding claimant sustained 38 percent permanent disability of her

left leg. Lastly, defendants assert the deputy commissioner erred in finding defendants are responsible for the entirety of claimant's IME expense.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on April 30, 2019 is affirmed in part and is reversed in part.

I affirm the deputy commissioner's finding that claimant sustained a work-related injury on July 3, 2015. I affirm the deputy commissioner's finding that claimant developed an infection that was casually related to the treatment for her work-related injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from September 11, 2015, through October 3, 2016. I affirm the deputy commissioner's finding that claimant sustained 38 percent permanent disability of her left leg, which entitles her to receive 83.6 weeks of permanent partial disability benefits commencing on October 4, 2016. I affirm the deputy commissioner's findings, conclusions, and analysis regarding these issues.

While I performed a de novo review, I give 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 arbitration hearing. I find the deputy commissioner correctly assessed the credibility of claimant. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

The remaining issue on appeal is claimant's entitlement to reimbursement for her IME. For the reasons that follow, the deputy commissioner's finding that claimant is entitled to reimbursement under Iowa Code section 85.39 is reversed.

Douglas Martin, M.D., the defendant-retained physician in this case, did not make an evaluation of permanent disability. He originally declined to offer an impairment rating and subsequently opined that claimant's claims had no casual correlation to her work injury. (Joint Exhibit 5, pp. 169-171; Ex. A, p. 2) I have previously held that there is a "distinct difference" between opinions on causation versus opinions on disability. See Reh v. Tyson Foods, Inc., File No. 5053428 (App. Mar. 26, 2018). In such cases, relying on the Iowa Supreme Court's literal interpretation of Iowa Code section 85.39 in DART v. Young, 867 N.W.2d 839, 847 (Iowa 2015), I have held that evaluations for purposes of determining causation do not trigger the reimbursement provisions of Iowa Code section 85.39. See Reh v. Tyson Foods, Inc., File No. 5053428 (App. Mar. 26, 2018).

Therefore, because Dr. Martin did not offer an impairment rating, I respectfully reverse the deputy commissioner's finding that claimant is entitled to reimbursement from defendants pursuant to Iowa Code section 85.39 for claimant's IME.

Because Iowa Code section 85.39 was not triggered, only the charge for the preparation of the written IME report is reimbursable under Iowa Administrative Code rule 876-4.33. See DART, 867 N.W.2d, at 846-847. In his invoice, Sunil Bansal, M.D., attributes \$2,941.00 to preparation of his IME report. Defendants offered no evidence that this amount was unreasonable. I therefore assess \$2,941.00 of Dr. Bansal's IME charge to defendants as a cost under rule 876-4.33.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 30, 2019, is affirmed in part and reversed in part.

All benefits shall be paid at the weekly rate of four hundred eighty-nine and 38/100 (\$489.38).

Defendants shall pay claimant healing period benefits commencing on September 11, 2015, through October 3, 2016.

Defendants shall pay claimant eighty-three point six (83.6) weeks of permanent partial disability benefits commencing on October 4, 2016.

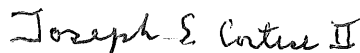
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay the medical expenses set forth in Claimant's Exhibit 23 consistent with the arbitration decision.

Pursuant to rule 876 IAC 4.33, all of claimant's costs are taxed to defendants in their entirety, but for Dr. Bansal's IME, which is taxed in the amount of two thousand nine hundred forty-one and no/100 dollars (\$2,941.00). Defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 11th day of June, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Dennis M. McElwain Via WCES

Timothy Clausen Via WCES