

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALLEN WERNER,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5044478
NCI BUILDING SYSTEMS,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
THE INSURANCE CO. OF THE STATE	:	
OF PENNSYLVANIA,	:	
	:	
Insurance Carrier,	:	Head Notes: 1108.50; 1402.40; 1804; 2501;
Defendants.	:	2502; 2907; 4000.2

Defendants NCI Building Systems, employer, and its insurer, The Insurance Company of the State of Pennsylvania, appeal from an arbitration decision filed on January 16, 2019. Claimant Allen Werner responds to the appeal. The case was heard on August 9, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 9, 2018.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish his ongoing low back symptoms, mental health issues, and erectile dysfunction are causally related to the work injury of July 30, 2012. The deputy commissioner further determined claimant carried his burden of proof to establish he is permanently and totally disabled as a result of the work injury. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits.

On appeal, defendants assert the deputy commissioner erred in excluding Exhibits O, P, and Q from the evidentiary record. Defendants further assert the deputy commissioner erred in finding claimant's mental health issues, ongoing low back symptoms, and erectile dysfunction are causally related to the work injury. In this regard, defendants assert the deputy commissioner erred in finding defendants are responsible for past medical expenses, and in finding claimant is entitled to alternate medical care. Lastly, defendants assert the deputy commissioner erred in finding claimant met his burden of proof to establish permanent and total disability. Defendants also assert an alternative commencement date for permanent partial disability benefits.

Claimant asserts on 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 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 January 16, 2019, that relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's decision to exclude Exhibit O from the evidentiary record, without additional comment. I affirm the deputy commissioner's finding claimant's mental health, low back, and erectile dysfunction conditions are causally related to the work injury. I affirm the deputy commissioner's finding that defendants are responsible for all causally related past medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to ongoing medical treatment for all causally related conditions. I affirm the deputy commissioner's finding that claimant is permanently and totally disabled as a result of the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits.

With the additional analysis set forth below, I respectfully disagree with, and reverse, the deputy commissioner's decision to sua sponte exclude Exhibits P and Q from the evidentiary record:

At the start of hearing, defendants offered Exhibits P and Q into evidence. Exhibit P is a transcript of claimant's July 14, 2014, deposition. Exhibit Q is a transcript of claimant's June 6, 2017, deposition. Unprompted by any objection, the deputy commissioner excluded Exhibits P and Q, reasoning claimant's prior deposition testimony amounted to cumulative evidence. The deputy commissioner further reasoned that review of that cumulative evidence would not be a good use of the agency's time and resources. Lastly, the deputy commissioner briefly reasoned that defendants had exceeded the page limitations previously discussed at the pre-hearing conference.

Following the deputy commissioner's decision to exclude Exhibits P and Q, defendants requested the ability to resubmit their exhibits to include only those portions of the deposition transcripts that were implicated by the facts in dispute. Defendants' request was summarily rejected by the deputy commissioner.

Deputy commissioners have a great deal of discretion in their oversight and determinations about admissibility of evidence. Marovec v. PMX Industries, 693 N.W.2d 779, 786 (Iowa 2005) However, the Iowa Workers' Compensation Commissioner may reverse deputy decisions regarding the admissibility of evidence when such decisions constitute abuse of discretion or clear errors of law. An abuse of discretion occurs when a ruling rests on grounds or reasons clearly untenable or unreasonable. Squealer Feeds v. Pickering, 530 N.W.2d 678, 681 (Iowa 1995) Abuse of discretion is synonymous with unreasonableness, and involves lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence. Stephenson v. Furnas Elec. Co., 522 N.W.2d 828, 831 (Iowa 1994)

The law is well settled that exclusion of evidence is not to be imposed lightly and is typically justified only when prejudice would result. See Stephenson, 522 N.W.2d at 831.

In this case, there were no objections pending before the deputy commissioner with respect to Exhibits P and Q. (See Hearing Transcript, page 14) ("I'm not objecting to those, your Honor.") For a deputy commissioner to exclude evidence on his or her own initiative there must be good reason, that is, grounds for exclusion of the evidence. See generally, Bash v. Hade, 62 N.W.2d 180, 186 (Iowa 1954) ("Courts have a considerable latitude in excluding offered evidence that is objectionable, even in the absence of any objection or if there is a proper ground which is not stated.... But there must first be a good reason for the exclusion.")

There is no evidence defendants in this case failed to comply with a rule or order of a deputy commissioner or the workers' compensation commissioner. As such, it cannot be said the evidence was excluded pursuant to a sanction under rule 4.36. While not definitively stated, it is presumed the deputy commissioner relied upon Iowa Code section 17A.14 to exclude Exhibits P and Q.

The provisions of Iowa Code section 17A.14(1) require the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

In this instance, it cannot be said claimant's deposition testimony is irrelevant, immaterial, or unduly repetitious. The deposition of any witness may be taken and used as evidence. Iowa Code section 86.18(2). Lay testimony is relevant and material upon cause and extent of injury in workers' compensation claims. Gits Mfg. Co. v. Frank, 855 N.W.2d 195, 199 (Iowa 2014) (quoting Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 421 (Iowa 1994))

Although claimant was present and available to testify on the date of the evidentiary hearing, that fact alone does not render his prior testimony irrelevant, immaterial, or unduly repetitious. The matter at hand dealt with multiple disputed issues, including causation. Such cases routinely require more documentary evidence than cases with fewer disputed issues. Both parties must have the ability, within reason, to support their respective cases with documentary evidence.

Defendants sought to introduce the deposition transcripts to expedite the hearing process. Counsel for defendants explained:

(...) He testified extensively twice. Again, it's not my intention to ask those questions over again here today. I have no intention of doing that. So it would speed up my cross-examination to not have to basically re-cover all the ground that was covered in his prior two depositions. He had a case that was filed once before. So one of his depositions is older, and one is more recent, covering some additional material since his prior deposition. And so to avoid having to ask all those questions again, we'd submit it to you in the exhibits in the deposition transcripts.

(Hearing Transcript, pp. 14-15)

Defendants' explanation is reasonable and rational. This agency is charged with administering the Iowa workers' compensation statutes in an efficient, timely manner with the goal of providing speedy justice. Deputy Commissioners have a duty to control the hearing and proceedings before them, and to manage the evidentiary record in a way that is reasonable for review. 876 IAC 4.20. Nevertheless, the parties are entitled to due process in the administrative arena.

In this case, claimant did not object to the admission of Exhibits P and Q. The deputy commissioner relied upon past experiences, wherein deposition transcripts have detailed similar information to that gleaned at hearing, in excluding the deposition transcripts as unduly repetitious. There is no evidence the deputy commissioner reviewed the proffered evidence prior to making a determination it was unduly repetitious and cumulative. The deputy commissioner's decision to exclude the deposition transcripts assumes the evidence proffered at hearing conformed to evidence received at prior, unrelated hearings. Such a finding is unreasonable. I find the deputy commissioner erred in excluding Exhibits P and Q as unduly repetitious and cumulative. I likewise find the deputy commissioner erred in failing to grant defendants the opportunity to resubmit sections of the deposition transcript they deemed relevant to their case.

Regardless of the deputy commissioner's error in excluding claimant's deposition transcripts, the error was harmless and does not change the outcome of the case. The undersigned has reviewed Exhibits P and Q and I find no reason to overrule the deputy commissioner's determinations regarding causation and permanent total disability.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 16, 2019, is affirmed in part and reversed in part.

Defendants shall pay claimant permanent total disability benefits commencing on July 30, 2012, and continuing weekly so long as claimant remains totally disabled except for the period from June 2017 through December 2017 when claimant should instead receive TPD benefits.

Defendants shall receive credit for all benefits paid to date.

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).

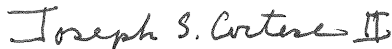
Defendants shall be responsible for the medical expenses, including mileage, as set forth in the arbitration decision.

Claimant shall remain entitled to causally related medical expenses pursuant to Iowa Code section 85.27.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding as set forth in the arbitration decision, and 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 12th day of March, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mark J. Sullivan Via WCES

Stephen W. Spencer Via WCES