

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MONTE JIMMERSON,

Claimant,

vs.

ULTIMATE AUTOMOTIVE SERVICE  
CENTER, INC.,

Employer,

and

TECHNOLOGY INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

**FEB 22 2018**

**WORKERS' COMPENSATION**

File No. 5052541

**A P P E A L**

**D E C I S I O N**

Head Note Nos: 1803, 2500

Defendants Ultimate Automotive Service Center, Inc., employer, and its insurer, Technology Insurance Company, appeal from an arbitration decision filed on September 2, 2016. Claimant Monte Jimmerson responds to the appeal. The case was heard on July 28, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 1, 2016.

The deputy commissioner found claimant sustained 30 percent industrial disability, which entitles claimant to 150 weeks of permanent partial disability (PPD) benefits, as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant on February 24, 2014. The deputy commissioner found claimant is entitled to reimbursement from defendants in the amount of \$133.68 for the out-of-pocket portion of a medical charge claimant incurred for the work injury with his primary care provider on February 27, 2014, without authorization from defendants. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the total amount of \$1,112.96, which includes the following: \$112.96 for claimant's filing and service fees, \$400.00 for a medical report from Brian Crites, M.D. and \$600.00 for a portion of the charge for a functional capacity evaluation (FCE) performed on May 5, 2016, by Todd Schemper, PT, DPT, at the request of claimant's attorney.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 30 percent industrial disability as a result of the work injury.

Defendants assert the award of industrial disability should be reduced by a substantial amount. Defendants assert the deputy commissioner erred in finding claimant is entitled to reimbursement from defendants in the amount of \$133.68 for the out-of-pocket portion of the medical charge claimant incurred with his primary care provider on February 27, 2014, without authorization from defendants. Defendants assert the deputy commissioner erred in ordering defendants to pay \$400.00 for Dr. Crites medical report and \$600.00 for a portion of Mr. Schemper's FCE fee.

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.

Having 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, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on September 2, 2016, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant sustained 30 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's order that defendants pay the following costs of claimant: \$112.96 for claimant's filing and service fees and \$400.00 for Dr. Crites' medical report.

I reverse the deputy commissioner's finding that claimant is entitled to reimbursement from defendants in the amount of \$133.68 for the out-of-pocket portion of the medical charge claimant incurred with his primary care provider on February 27, 2014, without authorization from defendants.

I reverse the deputy commissioner's order that defendants pay \$600.00 for a portion of Mr. Schemper's FCE fee.

I provide the following analysis regarding my decision in this matter:

Iowa Code section 85.27 gives the employer and the insurance carrier the right to direct medical care for an injured worker. Claimant went to his primary care provider on February 27, 2014, three days after the work injury occurred, for an evaluation of his injuries. (Hearing Transcript, p. 65) Claimant did not seek authorization for this medical treatment from defendants. (Id.) Nothing in the record indicates claimant was faced with any need for emergency treatment for his injuries. The proper course would have been for claimant to notify defendants of his claim and request an evaluation. If no evaluation was provided, claimant would then have the option of initiating an alternate medical care proceeding before the Division of Workers' Compensation. It appears there was no reason why claimant should not have followed standard protocol by giving defendants the opportunity to direct his care for the work injuries. To force defendants to pay claimant for his out-of-pocket share of the charge for the treatment in question would

invalidate defendants' right to control claimant's medical treatment pursuant to Iowa Code Section 85.27. Because defendants never gave such authorization, I reverse the deputy commissioner's finding that claimant is entitled to reimbursement from defendants in the amount of \$133.68 for the out-of-pocket portion of the medical charge claimant incurred with his primary care provider on February 27, 2014.

With regard to the disputed FCE charge, there is nothing in the record indicating any treating or evaluating physician requested an FCE to determine permanent restrictions for claimant. The FCE was obtained at the request of claimant's attorney for use in this litigation. Because the FCE was not requested by a treating or evaluating physician, and because defendants never authorized the FCE in the absence of a medical recommendation for it, I reverse the deputy commissioner's order that defendants pay \$600.00 for a portion of Mr. Schemper's FCE fee.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 2, 2016, is MODIFIED as follows:

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the weekly rate of five hundred twelve and 28/100 dollars (\$512.28) commencing October 20, 2014.

Defendants shall be given credit for thirty-five (35) weeks of benefits at the weekly rate of five hundred twelve and 28/100 dollars (\$512.28).

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of five hundred twelve and 96/100 dollars (\$512.96), and the parties shall split 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 this 22<sup>nd</sup> day of February, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies To:

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Matthew Milligan  
Attorney at Law  
6611 University Ave., Ste. 200  
Des Moines, IA 50324-1655  
[mmilligan@smalaw.net](mailto:mmilligan@smalaw.net)

Andrew T. Tice  
Attorney at Law  
100 Court Ave., Ste. 600  
Des Moines, IA 50309  
[atice@ahlerslaw.com](mailto:atice@ahlerslaw.com)