

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMY ROBERSON,

Claimant,

vs.

SEARS HOLDINGS CORPORATION,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5055975

APPEAL

DECISION

Head Notes: 1108; 1108.50; 1801; 2500;
3202; 5-9998

FILED
MAR 19 2019
WORKERS' COMPENSATION

Defendants Sears Holding Corporation, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on November 1, 2017. Claimant Tammy Roberson cross-appeals. Defendant Second Injury Fund of Iowa (the Fund) responds to the appeal. The case was heard on May 17, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 14, 2017.

The deputy commissioner found claimant carried her burden of proof that she sustained ongoing injuries to her right knee, her right hip and her low back as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on December 5, 2013. The deputy commissioner found claimant is entitled to receive a running award of healing period benefits commencing on November 17, 2015, for the injuries to her right knee, right hip and low back. The deputy commissioner found defendants employer and insurer are obligated to provide claimant with ongoing medical treatment for her right knee, right hip and low back, including, but not limited to, treatment with Thomas Atteberry, M.D. The deputy commissioner found claimant is entitled to payment or reimbursement by defendants employer and insurer for the requested past medical expenses of Miller Orthopedic Specialists, Radiology

Consultants, and CHI Health-Alegent Creighton Health itemized in Exhibit 14. The deputy commissioner found claimant is not entitled to payment or reimbursement by defendants employer and insurer for the requested past medical expenses of Mouw Family Chiropractic itemized in Exhibit 14. The deputy commissioner found that because claimant sustained injuries to her body as a whole she is not entitled to receive benefits from the Fund. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding.

Defendants employer and insurer assert on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained ongoing injuries to her right knee, her right hip and her low back as a result of the December 5, 2013, work injury. Defendants employer and insurer assert the deputy commissioner erred in finding claimant is entitled to receive a running award of healing period benefits for the injuries to her right knee, right hip and low back. Defendants employer and insurer assert the deputy commissioner erred in finding claimant sustained anything more than a minor injury to her right knee which was at maximum medical improvement by April 8, 2014, with permanent scheduled member disability of ten percent of the right lower extremity, which has been paid in full by defendants employer and insurer. Defendants employer and insurer assert the deputy commissioner erred in finding defendants employer and insurer are obligated to provide claimant with ongoing medical treatment for her right knee, right hip and low back. Defendants employer and insurer assert the deputy commissioner erred in finding claimant is entitled to payment or reimbursement by defendants employer and insurer for the requested past medical expenses of Miller Orthopedic Specialists, Radiology Consultants, and CHI Health-Alegent Creighton Health itemized in Exhibit 14. Defendants employer and insurer assert the deputy commissioner erred in ordering defendants employer and insurer to pay claimant's costs of the arbitration proceeding.

Claimant asserts on cross-appeal that the arbitration decision should be affirmed in its entirety. Defendant Fund also 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 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 November 1, 2017, which 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 finding that claimant carried her burden of proof that she sustained ongoing injuries to her right knee, her right hip and her low back as a result of the December 5, 2013, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive a running award of healing period benefits commencing on November 17, 2015, for the injuries to her right knee, her right hip and her low back. I affirm the deputy commissioner's finding that defendants employer and insurer are obligated to provide claimant with ongoing medical treatment for her right knee, her right hip and her low back including, but not limited to, treatment with Dr. Atteberry. I affirm the deputy commissioner's finding that claimant is entitled to payment or reimbursement by defendants employer and insurer for the requested past medical expenses of Miller Orthopedic Specialists, Radiology Consultants, and CHI Health-Alegent Creighton Health itemized in Exhibit 14. I affirm the deputy commissioner's finding that claimant is not entitled to payment or reimbursement by defendants employer and insurer for the requested past medical expenses of Mouw Family Chiropractic itemized in Exhibit 14. I affirm the deputy commissioner's finding that because claimant sustained injuries to her body as a whole she is not entitled to receive benefits from the Fund for the work injury. I affirm the deputy commissioner's order that defendants employer and insurer pay claimant's 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 November 1, 2017, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant a running award of healing period benefits at the stipulated weekly rate of one hundred ninety-seven and 43/100 dollars (\$197.43) commencing on November 17, 2015.

Defendants employer and insurer shall receive a credit for all benefits previously paid.

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 employer and insurer shall provide claimant with ongoing medical treatment for claimant's right knee, her right hip and her low back including, but not limited to, treatment with Dr. Atteberry.

Defendants employer and insurer shall pay or reimburse the medical expenses of Miller Orthopedic Specialists, Radiology Consultants, and CHI Health-Alegent Creighton Health itemized in Exhibit 14.

Claimant shall take nothing from the Second Injury Fund of Iowa in these proceedings.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding and defendants employer and insurer shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 19th day of March, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Joanie L. Grife
Attorney at Law
25 North Center Street
Marshalltown, IA 50158
Joanie@walklaw.com

Danielle R. Augustine
Attorney at Law
10 E. Cambridge Circle Drive, Ste. 300
Kansas City, KS 66103
daugustine@mvplaw.com

Amanda R. Rutherford
Assistant Attorney General
Dept. Justice
Hoover State Office Bldg.
Des Moines, IA 50319
amanda.rutherford@iowa.gov