BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL WARREN, Claimant, vs. ALTEC, INC., Employer, and SENTINEL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5067532 A P P E A L D E C I S I O N Head Notes: 1108.50; 1402.40; 1803; 2501; 2907

Defendants Altec, Inc., employer, and its insurer, Sentinel Insurance Company, appeal from an arbitration decision filed on April 20, 2020. Claimant Michael Warren respond to the appeal. The case was heard on December 12, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 23, 2020.

In the arbitration decision, the deputy commissioner gave greater weight to the opinions of Shawn Spooner, M.D., and John D. Kuhnlein, D.O., than those of Joseph Chen, M.D. Relying on the opinion of Dr. Kuhnlein, the deputy commissioner found claimant sustained permanent impairment of his body as a whole as a result of the stipulated work injury which occurred on March 22, 2017. Considering claimant's impairment and the other relevant factors pertaining to industrial disability, the deputy commissioner found claimant sustained 25 percent industrial disability as a result of the work injury, which entitles claimant to receive 125 weeks of permanent partial disability benefits commencing on November 9, 2018. The deputy commissioner adopted claimant's rate calculation and found claimant's weekly benefit rate for the injury to be $465.32. The deputy commissioner found defendants are responsible for the requested past medical expenses itemized in Exhibit 6, along with the cost of any future treatment causally related to the work injury. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of $220.00.

Defendants assert on appeal that the deputy commissioner's finding that claimant sustained 25 percent industrial disability is excessive. Defendants also assert the deputy commissioner applied an incorrect legal standard in awarding claimant's past medical expenses.

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 20, 2020, is affirmed in part without additional comment and affirmed in part with additional analysis.

I affirm the deputy commissioner's decision to give greater weight to the opinions of Dr. Spooner and Dr. Kuhnlein than to those of Dr. Chen. I affirm the deputy commissioner's finding that claimant sustained 25 percent industrial disability. I affirm the deputy commissioner's finding that defendants are responsible for the cost of any future medical treatment needed by claimant that is causally related to the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of $220.00. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I also affirm the deputy commissioner's determination that defendants are responsible for the requested past medical expenses itemized in Exhibit 6, but I offer the following additional analysis:

Claimant testified he was told by defendants' representatives shortly after being released by Deema Fattal, M.D., on November 9, 2018, that defendants "were no longer going to take care of me." (Joint Exhibit 4, pp. 13-14; Hearing Transcript, pp. 32-34) Claimant testified it was at that point that he sought treatment on his own with Dr. Spooner.

Defendants' representative Dan Sullivan disputed this testimony at hearing (Tr., p. 115), but claimant's testimony is supported by the record from claimant's initial appointment with Dr. Spooner on February 13, 2019. (JE 7, p. 2 - noting "neurology at the University of Iowa . . . documented that he was fit to return to work without limitations and so therefore Worker's Compensation discontinued active coverage") I find claimant's testimony in this regard to be more credible than the testimony of Mr. Sullivan. I therefore find claimant was first told in November 2018 that additional care would not be provided by defendants.

In April 2019, defendants sent claimant for an independent medical examination (IME) with Dr. Chen. (Defendants' Ex. A) Relying on that IME, defendants' counsel formally denied the treatment recommendations of Dr. Spooner in a letter dated June 6, 2019. (Ex. F)

Exhibit 6 itemizes expenses for treatment ranging from claimant's first appointment with Dr. Spooner on February 13, 2019, through October 2019. All of that treatment occurred after defendants denied liability for ongoing treatment in November 2018. That treatment was related to the conditions I found to be causally related to claimant's work injury per the opinions of Dr. Kuhnlein and Dr. Spooner.

Defendants argue this treatment was not reasonable because it was duplicative of the care they initially authorized, but I am not persuaded by this argument. First, claimant testified he "wasn't fixed" upon his release from Dr. Fattal and still had ongoing symptoms, which is why he sought an attorney and additional care. (Tr., pp. 31-34) And months later, when Dr. Kuhnlein authored his IME report, he recommended ongoing care with Dr. Spooner and Dr. Bell. (Cl. Ex. 1, p. 11) Thus, even if such care was duplicative and, in fact, claimant testified it was not (Tr., pp. 34-35), I find it was necessary and reasonable for claimant's ongoing symptoms.

Defendants argue on appeal that claimant must show the care related to those expenses was both "reasonable and beneficial" under the standard set forth in Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010). However, this standard is applicable when an employer "admits compensability of the injury and assumes responsibility for furnishing medical care." Id. at 204-07. In this case, however, I found defendants denied compensability of the injury after claimant was released from Dr. Fattal's care in the fall of 2018. Because defendants denied liability for treatment after that point, the "reasonable and beneficial" standard is not applicable for any expenses incurred during that period of denial.

Instead, claimant needs to show only that the injury is compensable and the claimed expenses are reasonable. Id. at 204. As explained by the court:

> The first circumstance in which an employee can select his or her own medical care is when the employer denies compensability of the injury. The right to control medical care emanates entirely from the duty to furnish medical care for injuries compensable under the workers' compensation laws. . . . Without the duty to furnish care, the employer has no right to control care. Thus, if the employer contests the compensability of the injury following notice, the statutory responsibility of the employer to furnish reasonable medical care to the employee or pay other employee benefits described in the workers' compensation statute is not imposed until the issue of compensability is resolved in favor of the employee. Likewise, the

> employer has no right to choose the medical care when compensability is contested. Instead, the employee is left to pursue his or her own medical care for the injury at his or her own expense and is free to pursue a claim against the employer to recover the reasonable cost of medical care upon proof of compensability of the injury. If the employee establishes the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged.
>
> Thus, the statute contemplates that an injured employee may select his or her own medical care when the employer abandons the injured employee through the denial of compensability of the injury. When this circumstance occurs, the employee may subsequently recover the costs of the reasonable medical care obtained upon proof of compensability of the injury derived from the statutory duty of the employer to furnish reasonable medical care and supplies for all compensable injuries.

Id. at 204 (citations omitted).

As discussed above, I found the expenses contained in Exhibit 6 were both reasonable and necessitated by claimant's work-related injury. Thus, with this additional analysis, I affirm the deputy commissioner's finding that those expenses are the responsibility of defendants.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 20, 2020, is affirmed in part without comment and affirmed in part with additional analysis.

All weekly benefits shall be paid at the weekly rate of four hundred sixty-five and 32/100 dollars ($465.32).

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits commencing on the stipulated commencement date of November 9, 2018.

Defendants shall receive credit for all weekly 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 are responsible for the requested past medical expenses itemized in Exhibit 6.

Defendants are responsible for the cost of any future medical treatment needed by claimant that is causally related to the work injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two hundred twenty and no/100 dollars ($220.00), 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 18th day of November, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jane Lorentzen (via WCES)

Nick Platt (via WCES)