

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATINA WESLEY,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Self-Insured Employer,

Defendant.

File Nos. 5050508, 5049297

A P P E A L

DECISION **FILED**

APR 10 2017

WORKERS' COMPENSATION

Head Note Nos.: 1801, 1803, 2500, 2700

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from an arbitration decision filed on November 23, 2015. Claimant Katina Wesley responds to the appeal. The case was heard on May 4, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 22, 2015.

In File No. 5050508, stipulated injury date of April 2, 2013, the deputy commissioner found claimant carried her burden of proof that she sustained a compensable injury to her low back, and the deputy commissioner ordered defendant to provide medical care for claimant's low back condition. The deputy commissioner also ordered defendant to pay the charge for the independent medical evaluation (IME) performed by Farid Manshadi, M.D., on February 25, 2015. The deputy commissioner also found claimant failed to carry her burden of proof that the April 2, 2013, injury caused a compensable injury to her right hip.

In File No. 5049297, stipulated injury date of March 21, 2014, the deputy commissioner found claimant carried her burden of proof that she sustained a compensable injury to her left shoulder and her cervical spine, and the deputy commissioner awarded claimant a running award of healing period benefits for her cervical spine condition commencing on March 27, 2015, until such time as claimant is entitled to receive permanent disability benefits. The deputy commissioner ordered defendant to provide medical care for claimant's left shoulder and cervical spine conditions. The deputy commissioner ordered defendant to pay past medical expenses requested by claimant as itemized in Exhibit 14. The deputy commissioner ordered defendants to pay the charge for the IME performed by Stanley Mathew, M.D., on March 5, 2015. The deputy commissioner also found claimant failed to carry her burden of proof that the March 21, 2014, injury caused a compensable injury to her right hip.

For both files, the deputy commissioner ordered defendant to pay costs requested by claimant totaling \$2,835.11.

In File No. 5050508, defendant asserts on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained a compensable injury to her low back and in ordering defendant to provide medical care for claimant's low back condition.

In File No. 5049297, defendant asserts on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained a compensable injury to her left shoulder and her cervical spine and in awarding claimant a running award of healing period benefits for her cervical spine condition commencing on March 27, 2015, until such time as claimant is entitled to receive permanent disability benefits. Defendant also asserts the deputy commissioner erred in ordering defendant to provide medical care for claimant's left shoulder and cervical spine conditions. Defendant also asserts the deputy commissioner erred in ordering defendant to pay past medical expenses requested by claimant as itemized in Exhibit 14. Defendant also asserts the deputy commissioner erred in ordering defendant to pay Dr. Mathew's IME charge.

In both files, defendant asserts on appeal that the deputy commissioner erred in ordering defendant to pay costs requested by claimant totaling \$2,835.11.

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 November 23, 2015, which relate to the following issues:

In File No. 5050508, finding claimant carried her burden of proof that she sustained a compensable injury to her left shoulder and her cervical spine I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained a compensable injury to her low back. I also affirm the deputy commissioner's order that defendant shall provide medical care for claimant's low back condition.

In File No. 5049297, I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained a compensable injury to her left shoulder and her cervical spine. I also affirm the deputy commissioner's finding that claimant is entitled to a running award of healing period benefits for her cervical spine condition commencing on March 27, 2015, until such time as claimant is entitled to permanent disability benefits. I also affirm the deputy commissioner's order that defendant shall

provide medical care for claimant's left shoulder and cervical spine conditions. I also affirm the deputy commissioner's order that defendant shall pay past medical expenses requested by claimant as itemized in Exhibit 14.

In both files I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that either injury caused a compensable injury to her right hip. I also affirm the deputy commissioner's order that defendant pay costs requested by claimant totaling \$2,835.11.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

In File No. 5049297, I reverse the deputy commissioner's order that defendant pay Dr. Mathew's IME charge. I provide the following analysis:

Iowa Code section 85.39 provides the following, in pertinent part:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

In this case, claimant alleged two different injuries and filed two separate petitions which were consolidated for one arbitration hearing. Claimant then obtained two IMEs, one from Dr. Manshadi and one from Dr. Mathew. Each doctor did not evaluate just one particular injury date, but instead both doctors evaluated claimant regarding both injury dates and both IME reports addressed both injuries. The two IMEs were performed within two weeks of each other and they were duplicative evaluations. This is not a case where separate IMEs were needed to address the two different injuries. Because the first IME by Manshadi addressed all of the medical issues raised in the two consolidated cases, the second IME by Dr. Mathew was unnecessary. Therefore, claimant is not entitled to reimbursement for Dr. Mathew's IME. See generally, DART v. Young, 867 N.W.2d 839 (Iowa 2015)

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision of November 23, 2015, is MODIFIED as follows:

**Regarding File No. 5050508, injury date of April 2, 2013:**

Defendant shall provide medical care for claimant's lower back condition.

**Regarding File No. 5049297, injury date of March 21, 2014:**

Defendant shall pay claimant temporary total disability benefits at the rate of four hundred eight and 48/100 dollars (\$408.48) per week commencing March 27, 2015, until such time as claimant is entitled to receive permanent disability benefits.

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

Defendant shall be given credit for any benefits previously paid.

Defendant shall provide medical care for claimant's left shoulder and cervical spine conditions.


Defendant shall pay past medical expenses requested by claimant as itemized in Exhibit 14.

**Regarding both files:**

Pursuant to rule 876 IAC 4.33, defendant shall pay costs of two thousand eight hundred thirty-five and 11/100 Dollars (\$2,835.11) as set forth in the arbitration decision.

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

Signed and filed this 10<sup>th</sup> day of April, 2017.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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