

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MARY BETH UNDERWOOD,

Claimant,

vs.

ALLEGIS GROUP, INC. d/b/a  
TEKSYSTEMS,

Employer,

and

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,Insurance Carrier,  
Defendants.

File No. 5050221

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30, 1402.40

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Claimant, Mary Underwood, appeals from an arbitration decision filed on April 8, 2020. Defendants, Allegis Group, Inc. d/b/a TEK Systems, employer, and Indemnity Insurance Company of North America, insurer, respond to the appeal. The case was heard on September 6, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 16, 2018.

On December 9, 2020, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proving she sustained temporary injuries to her neck and back, which arose out of and in the course of her employment with the defendant employer, on November 11, 2013. As claimant failed to establish an entitlement to permanent disability benefits, consideration of the issues of commencement date for permanent disability benefits and any credit under Iowa Code section 85.34(7) were deemed unnecessary.

Conversely, the deputy commissioner found claimant failed to carry her burden of proving she sustained injuries to her left hip and head as a result of the November 11, 2013, slip and fall. With respect to the latter condition, the deputy commissioner determined claimant failed to carry her burden of proving she sustained a neurological or cognitive injury as a result of the November 11, 2013, slip and fall.

Because the deputy commissioner found claimant failed to prove her cognitive condition is causally related to the November 11, 2013, work injury, the deputy commissioner found all other issues pertaining to the alleged head injury to be moot, including: (1) whether claimant is entitled to receive temporary disability benefits between January 16, 2014, and February 7, 2014; (2) whether claimant is entitled to receive permanent disability benefits; and (3) whether claimant is entitled to receive reimbursement from defendants for requested past medical expenses, medical mileage, and out-of-pocket expenses for unauthorized treatment. With respect to claimant's entitlement to temporary disability benefits between January 16, 2014, and February 7, 2014, the deputy also found that claimant failed to prove she was off work during the alleged time period.

The deputy commissioner found claimant's gross average weekly earnings at the time of the injury were \$1,345.80, which results in a weekly workers' compensation benefit rate for the injury of \$757.52.

The deputy commissioner found claimant is entitled to reimbursement for any authorized medical treatment associated with her temporary neck and back injuries, if any such expenses exist.

The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for the alleged underpayment of temporary disability benefits and/or nonpayment of permanent disability benefits.

The deputy commissioner denied claimant reimbursement for the independent medical examination of Sunil Bansal, M.D. under Iowa Code section 85.39; however, the deputy commissioner taxed \$1,000.00 of Dr. Bansal's fee to defendants as a cost. In total, the deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,304.49.

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to carry her burden of proving the November 11, 2013, work injury materially aggravated her pre-existing cognitive condition. Claimant also asserts the deputy commissioner erred in finding claimant failed to prove entitlement to temporary disability benefits and permanent partial or permanent total disability benefits. Claimant further asserts the deputy commissioner erred in finding claimant failed to prove entitlement to reimbursement of medical expenses, including unpaid mileage, and the fees associated with Dr. Bansal's IME under Iowa Code section 85.39. Lastly, claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits.

Defendants assert 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 before the presiding deputy workers' compensation commissioner and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 8, 2020, which relate to the issues properly raised on intra-agency appeal.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed the credibility of claimant. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

I find the deputy commissioner provided an immensely thorough and well-reasoned analysis of all 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 claimant only carried her burden of proving she sustained temporary injuries to her neck and back, which arose out of and in the course of her employment with the defendant employer, on November 11, 2013. I affirm the deputy commissioner's finding claimant failed to meet her burden of proving she sustained permanent disability as a result of the work-related injury to her neck and back. Such a finding is consistent with the evidentiary record as a whole. No physician, including Dr. Bansal, assigned permanent impairment or permanent restrictions relating to claimant's temporary neck and back injuries.

I likewise affirm the deputy commissioner's finding claimant failed to carry her burden of proving the November 11, 2013, work injury caused or materially aggravated any pre-existing condition in claimant's left hip. Like the deputy commissioner, I afford the opinions of Michael Jackson, M.D., greater weight than those of Dr. Bansal with respect to the left hip condition. Dr. Jackson provided contemporaneous evaluation of claimant's musculoskeletal complaints and crafted a course of treatment for such complaints. According to Dr. Jackson, claimant did not report any complaints of hip pain during the course of her treatment. She did not indicate hip pain on the questionnaire she completed. Moreover, Dr. Jackson evaluated claimant's left hip and found no conditions requiring treatment. Given these findings, Dr. Jackson ultimately opined claimant did not injure her left hip or sustain a labral tear as a result of the November 11, 2013, slip and fall. (Exhibit L, page 1) I accept the opinions of Dr. Jackson and find claimant failed to prove she sustained an injury to the left hip as a result of the November 11, 2013, slip and fall.

I affirm the deputy commissioner's finding claimant failed to carry her burden of proving the November 11, 2013, work injury caused or materially aggravated any pre-existing cognitive or neurological condition. The evidentiary record as a whole overwhelmingly supports such a finding.

Claimant relies upon the opinions of Heike Schmolck, M.D. and Jose Angel, M.D. in support of her assertion that the November 11, 2013, work injury caused or materially aggravated her pre-existing, cognitive condition.

Like the deputy commissioner, I afford no weight to Dr. Schmolck's causation opinions as there is no evidence Dr. Schmolck was privy to a complete medical record. Dr. Schmolck's opinions are largely based on claimant's self-reporting of the work injury and her medical history. (Joint Exhibit 5, p. 100) Outside of contemporaneous diagnostic imaging, there is no evidence what, if any, pre-existing medical records Dr. Schmolck reviewed prior to reaching her conclusions. (See JE5, pp. 100-117) Moreover, Dr. Schmolck only examined claimant on a limited basis between February and June 2014. She did not produce a final report.

I similarly afford no weight to the opinions of Dr. Angel. Dr. Angel is an internal medicine physician and claimant's personal physician. While I certainly do not question his competency as an internist, his credentials and experience with respect to neurological conditions simply do not measure up to those of the other physicians offering causation opinions in this matter. Drs. Daniel Tranel, Ph.D., and David Demarest, Ph.D., are neuropsychologists. As noted by Dr. Demarest, claimant's own IME physician, neuropsychologists are uniquely positioned as brain health professionals to examine all relevant data and make determinations on causation. (Ex. 3, p. 57) I find the credentials and experience of Drs. Tranel and Demarest to be far superior to those of Dr. Angel when it comes to the diagnosis and causation of neurological conditions.

Moreover, as correctly pointed out by the deputy commissioner in the arbitration decision, Dr. Angel's expert opinion runs contrary to the medical opinions of virtually all other physicians in the evidentiary record. This is particularly relevant as Dr. Angel is the only physician in the evidentiary record to produce a final, expert report opining the November 11, 2013, work injury caused or materially aggravated claimant's pre-existing cognitive or neurological condition.

According to Dr. Angel, the November 11, 2013, slip and fall materially aggravated claimant's pre-existing arachnoid cyst. (Ex. 4, p. 59) Dr. Angel holds the opinion that claimant's cognitive difficulties, hypertension, fatigue, low stamina, and heat intolerance are all related to said cyst. (JE31, p. 317) However, Dr. Angel's reasoning has been expressly or impliedly rejected by at least eight (8) physicians throughout the evidentiary record.

The arachnoid cyst was first discovered as an incidental finding on claimant's diagnostic imaging in July 2005. (See JE19, p. 266) Since that time, a number of physicians have expressly declined to causally relate claimant's cognitive and/or neurological symptoms to the arachnoid cyst. At the time of its discovery, claimant's then-treating providers instructed claimant that the cyst was an incidental finding, asymptomatic, and not in need of medical or surgical attention. These opinions were confirmed and reiterated by a number of specialty physicians both prior to and after the November 11, 2013, work injury.

Scott Fakrell, D.O., opined he was "certain" the arachnoid cyst was not the cause of claimant's symptoms. (JE19, p. 266) David Boarini, M.D., a well-respected neurosurgeon, opined he did not believe claimant's arachnoid cyst was symptomatic or otherwise related to the minor head injury she sustained in 2005. (JE20, p. 268) Matthew Howard, M.D., another neurosurgeon, opined claimant's symptoms were not related to the arachnoid cyst. (JE24, p. 276) Dr. Howard offered such an opinion in 2005, and then again in 2008. (See Id.) Frederic Meyer, M.D., a neurosurgeon at the Mayo Clinic, a tertiary medical facility, opined claimant's cyst was not causing any pressure on the brain and it would be quite uncommon for such a cyst to cause symptoms. (JE29, p. 290)

Claimant returned to the Mayo Clinic Neurology Department on February 7, 2013, for an evaluation of what she believed to be a "very complex syndrome." (JE29, p. 292) At the Mayo Clinic, claimant was evaluated by several physicians, including a neurologist/psychiatrist, a physiatrist, a psychologist, an internist, and a neurosurgeon. (See JE29, pp. 294-309) All five physicians opined claimant's presentation was suggestive of post-concussive symptoms. None of the five physicians causally related claimant's symptoms to the arachnoid cyst. In fact, two of the physicians expressly rejected such a causal relationship. Jason Szostek, M.D., opined there was no evidence of brain swelling and he did not attribute claimant's hypertension to any intracranial process. (JE29, p. 307) Richard Marsh, M.D., a neurosurgeon, informed claimant he did not believe the arachnoid cyst was responsible for her symptoms. (JE29, p. 308)

Additionally, E. Torage Shivapour, M.D., a neurologist at the University of Iowa Hospitals and Clinics opined, "Given the location of the arachnoid cyst, we cannot explain that her current symptoms are secondary to this finding." (JE8, p. 151) Lastly, Dr. Schmolck, whose opinion claimant relies upon, also expressed her belief that the arachnoid cyst was not relevant, nor likely to become relevant, as the cyst was most likely congenital in nature. (JE5, p. 104)

The evidentiary record demonstrates that despite the opinions of numerous specialists, many of whom work at tertiary medical facilities, claimant has consistently and defiantly rejected such opinions in favor of her own beliefs. As discussed by Dr. Tranel, claimant "latches on to various explanations and cause and effect relationships, and then is highly resistant to changing her views, even when confronted with directly contradictory information and opinions from some of the most respected experts in the field." (Ex. I, pp. 70-71) Additional discussion regarding the same can be found on page 31 of the arbitration decision.

The abovementioned medical opinions, as well as the expert reports of Drs. Tranel and Demarest, cast significant doubt on Dr. Angel's diagnosis and causation opinion. Like the deputy commissioner, I do not find Dr. Angel's causation opinion to be particularly credible or convincing in this matter.

Having reviewed, pondered, and weighed the competing medical causation opinions in this evidentiary record, I agree with the deputy commissioner and accept the opinions of Drs. Tranel and Demarest as most credible. Roger Riss, Ph.D.'s opinions support the opinions of Drs. Tranel and Demarest and are also accepted. Their opinions are consistent with the evidentiary record as a whole, which contains five detailed neuropsychological evaluations. Despite Dr. Angel's opinion stating otherwise, all five of the neuropsychological evaluations concluded claimant does not have cognitive impairments. (JE23; JE35; Ex. 1; Ex. 3; See Ex. 1, p. 75, Ex. 5, p. 61) Three of these evaluations were conducted subsequent to the November 11, 2013, work injury. (See JE35; Ex. 1; Ex. 3) Having reached this finding, I similarly find that claimant failed to prove her alleged cognitive or neurological condition, the treatment she obtained for said condition, or any resulting disability from the same, are causally related to, arose out of, or were materially aggravated or accelerated by the November 11, 2013, work injury.

Given this finding, I also affirm the deputy commissioner's finding claimant failed to prove entitlement to temporary disability benefits for the time she was reportedly off work, due to her cognitive condition, between January 26, 2014, and February 7, 2014.

I affirm the deputy commissioner's finding claimant failed to prove entitlement to reimbursement of medical expenses, including unpaid mileage, and the fees associated with Dr. Bansal's IME under Iowa Code section 85.39. Lastly, I affirm the deputy commissioner's finding claimant is not entitled to receive penalty benefits.

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 April 8, 2020, is affirmed in its entirety.

Claimant shall take nothing from these proceedings by way of additional periods of temporary disability benefits or any permanent disability benefits.

Defendants shall pay unto claimant the underpayment, if any, in temporary disability benefits resulting from a determination of claimant's proper rate of compensation as seven hundred fifty-seven and 52/100 dollars (\$757.52).

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. 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 receive credit for benefits paid.

Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the arbitration decision.

Defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 30<sup>th</sup> day of December, 2020.

A handwritten signature in black ink, appearing to read "Michael J. Lunn", is written over a horizontal line.

MICHAEL J. LUNN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Robert Tucker (via WCES)

Aaron Oliver (via WCES)