

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMELIA LUSCOMBE,

Claimant,

vs.

IDA COUNTY SHERIFF'S DEPT.,

Employer,

and

IOWA MUNICIPALITIES WORKERS'
COMPENSATION ASSOCIATION,

Insurance Carrier,
Defendants.

FILED

MAR 7 2018

WORKERS' COMPENSATION

File No. 5047861

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1108; 1803;
2500; 5-9998

Defendants Ida County Sheriff's Dept., employer, and its insurer, Iowa Municipalities Workers' Compensation Association, appeal from an arbitration decision filed on October 7, 2016. Claimant Amelia Luscombe appeals. The case was heard on September 29, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 26, 2015.

The deputy commissioner found claimant carried her burden of proof that she sustained permanent disability as a result of the stipulated injury which arose out of and in the course of her employment with defendant-employer on October 23, 2012. The deputy commissioner found claimant sustained 20 percent industrial disability as a result of the work injury, which entitles claimant to receive 100 weeks of permanent partial disability (PPD) benefits commencing on February 19, 2013. The deputy commissioner found claimant is not entitled to receive additional healing period benefits beyond what was previously paid by defendants from January 11, 2013, through February 18, 2013. The deputy commissioner found claimant is entitled to receive payment from defendants pursuant to Iowa Code section 85.27(7) for lost wages for the times claimant was required to leave work for medical treatment for the treatment dates itemized in Exhibit 27. The deputy commissioner found claimant is entitled to receive payment and/or reimbursement from defendants for the requested past medical expenses itemized in Exhibit 24 and for the medical mileage itemized in Exhibit 25. The deputy commissioner found that pursuant to Iowa Code section 85.38(2), defendants are entitled to a credit for any of the medical expenses listed in Exhibit 24 which were paid by defendant-employer's insurance carrier. The deputy commissioner found claimant is entitled to receive alternate medical care in the form of ongoing treatment by John Cook, M.D. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$537.64.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained permanent disability as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant sustained 20 percent industrial disability. Defendants assert if it is found on appeal that claimant is entitled to industrial disability, the award of industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive payment and/or reimbursement from defendants for the requested past medical expenses itemized in Exhibit 24 and for the medical mileage itemized in Exhibit 25. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive alternate medical care in the form of ongoing treatment by John Cook, M.D.

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, 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 October 7, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained permanent disability as a result of the October 23, 2012, work injury. I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability as a result of the work injury, which entitles claimant to receive 100 weeks of PPD benefits. I affirm the deputy commissioner's finding that claimant is not entitled to receive additional healing period benefits beyond what was previously paid by defendants from January 11, 2013, through February 18, 2013. I affirm the deputy commissioner's finding that claimant is entitled receive payment from defendants pursuant to Iowa Code section 85.27(7) for lost wages for the times claimant was required to leave work for medical treatment for the treatment dates itemized in Exhibit 27. I affirm the deputy commissioner's finding that claimant is entitled to receive payment and/or reimbursement from defendants for the requested past medical expenses itemized in Exhibit 24 and for the medical mileage itemized in Exhibit 25. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.38(2), defendants are entitled to a credit for any of the medical expenses listed in Exhibit 24 which were paid by defendant-employer's insurance carrier. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care in the form of ongoing treatment by Dr. Cook. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$537.64.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. Defendant asserts claimant was not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 7, 2016, is affirmed in its entirety.

Defendants shall pay the claimant one hundred (100) weeks of permanent partial disability benefits at the weekly rate of four hundred and one dollars and 79/100 (\$401.79) commencing on February 19, 2013.

Defendants shall receive credit for benefits paid.

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

No further healing period benefits are owed, however, pursuant to Iowa Code section 85.27(7), claimant shall be paid an amount equivalent to the wages lost at her rate of pay for the times she was required to leave work for medical treatment, for the treatment dates listed in Exhibit 27.


Defendants shall pay the medical expenses itemized in Exhibit 24. Unpaid bills shall be paid directly to the providers. Out-of-pocket expenses paid by claimant shall be reimbursed directly to claimant. Pursuant to Iowa Code section 85.38(2), defendants are entitled to a credit for any of the expenses paid by defendant-employer's insurance carrier.

Defendants shall authorize Dr. Cook to provide ongoing care for claimant for the work injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of five hundred thirty-seven and 64/100 dollars (\$537.64), 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 7th day of March, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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