

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICKY MARTIN,

Claimant,

vs.

EARLING GRAIN AND FEED,

Employer,

and

FIREMAN'S INSURANCE COMPANY
OF WASHINGTON, D.C.,

Insurance Carrier,
Defendants.

File No. 5064897

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1804; 2502; 2907

Defendants Earling Grain and Feed, employer, and its insurer, Fireman's Insurance Company of Washington, D.C., appeal from an arbitration decision filed on July 1, 2020. Claimant Ricky Martin cross-appeals. The case was heard on October 15, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 2, 2020.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of the stipulated work injury, which occurred on July 21, 2017. The deputy commissioner found claimant reached MMI on March 25, 2019. After considering all relevant factors, the deputy commissioner found claimant sustained permanent total disability from the work injury under the traditional industrial disability analysis. The deputy commissioner declared March 25, 2019, as the commencement date for permanent total disability benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the independent medical evaluation (IME) of claimant by John D. Kuhnlein, D.O. Lastly, the deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

On appeal, defendants assert the deputy commissioner erred in finding claimant reached MMI for the work injury. Accordingly, defendants assert the extent of claimant's entitlement to permanent partial disability benefits is not ripe for determination at this time. Defendants alternatively assert the deputy commissioner erred in finding claimant proved he is permanently and totally disabled. In that regard, defendants assert claimant was not credible, and defendants assert claimant failed to prove several of his current conditions are causally related to the work injury.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety. Despite filing a cross-appeal, claimant offers no arguments regarding the cross-appeal.

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 17A.15 and 86.24, those portions of the proposed arbitration decision filed on July 1, 2020, that relate to issues properly raised on intra-agency appeal are affirmed in part and modified in part.

Without further analysis, I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for Dr. Kuhnlein's IME and I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's finding that claimant reached MMI. However, the deputy commissioner's finding is modified as to the date claimant actually reached MMI. I provide the following additional analysis:

Relying on the medical opinions of claimant's treating physician, Morgan LaHolt, M.D., and claimant's IME physician, Dr. Kuhnlein, the deputy commissioner found claimant reached MMI on March 25, 2019. However, a closer examination of the evidentiary record reveals March 25, 2019, was the date on which Dr. LaHolt placed claimant at MMI for his physical injuries. Dr. LaHolt expressly stated he would defer to Walter Duffy, M.D., as to the date on which claimant reached MMI from a psychiatric standpoint. (Joint Exhibit 4, page 60)

In his September 11, 2019, report, Dr. Duffy indicated claimant's major depressive disorder, anxiety disorder, pseudobulbar affect, and cognitive impairments were caused by the July 21, 2017, work injury. Although Dr. Duffy indicated claimant would require ongoing psychiatric medication management and ongoing psychotherapy, Dr. Duffy placed claimant at MMI for his mental health conditions as of August 30, 2019. (JE7, p. 155)

The MMI date assigned by Dr. Duffy is supported by the greater weight of the medical evidence and is consistent with claimant's continued medical treatment after March 25, 2019. As such, I modify the MMI date identified by the deputy commissioner, and I find August 30, 2019, is the correct date for MMI in this case.

Dr. Kuhnlein determined claimant sustained a combined 24 percent whole person impairment for his traumatic brain injury, tinnitus, and cervical spine injury. There is no opinion contradicting Dr. Kuhnlein's findings regarding permanent impairment. (Ex. 9, pp. 197-198) Three physicians opined claimant is not capable of returning to gainful employment. (JE4, pp. 62-63; JE7, p. 155; Ex. 9, pp. 197-198) There are no contrary opinions regarding claimant's ability to return to work. As did the

deputy commissioner, I do not find the expert opinions of Bruce Gutnik, M.D., to be convincing in this case. (Arbitration Decision, page 8)

Given this record, I affirm the deputy commissioner's finding that claimant is permanently and totally disabled as a result of the July 21, 2017, work injury.

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. The deputy commissioner found claimant to be credible. I find the deputy commissioner correctly assessed claimant's credibility. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 1, 2020, is affirmed in part and modified in part.

Defendants shall pay claimant permanent total disability benefits at the weekly rate of five hundred thirty-five and 00/100 (\$535.00) dollars commencing on August 30, 2019, and continuing until claimant is no longer permanently and totally disabled.

Defendants shall receive credit for all benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 27th day of January, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Corey J. L. Walker (via WCES)

David Brian Scieszinski (via WCES)