

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOE PETERSON,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5057582
AKIN BUILDING CENTER,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
UNION INSURANCE COMPANY,	:	
	:	
Insurance Carrier,	:	Head Notes: 1108; 1402.40; 1801; 1801.1;
Defendants.	:	2501; 2502; 2907

Claimant Joe Peterson appeals from an arbitration decision filed on March 29, 2019. Defendants Akin Building Center, employer, and its insurer, Union Insurance Company, respond to the appeal. The case was heard on February 22, 2018, and it was considered fully submitted before the deputy workers' compensation commissioner on March 23, 2018.

The deputy commissioner found claimant is entitled to receive temporary total disability benefits from October 13, 2015, through March 9, 2016, for the stipulated work-related injury which occurred on October 1, 2015. The deputy commissioner found claimant is entitled to receive temporary partial disability benefits from March 10, 2016, through May 31, 2016, for the work injury. The deputy commissioner found claimant failed to meet his burden of proof to establish that the work injury caused permanent disability. As a result, the deputy commissioner found the issues of extent of industrial disability and commencement date for permanent partial disability benefits are moot. The deputy commissioner found defendants are not responsible for the past requested medical expenses because claimant failed to prove the requested expenses are related to a compensable condition, and further the deputy commissioner found claimant failed to establish that the unauthorized medical care was beneficial. The deputy commissioner found defendants are entitled to receive a credit for overpaid temporary total disability benefits in the amount of \$1,129.94. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for alleged nonpayment of permanent partial disability (PPD) benefits, as PPD benefits were not owed. The deputy commissioner found defendants are responsible for payment of interest on unpaid benefits. The deputy commissioner found defendants are

not entitled to receive a credit for payment of claimant's IME. Finally, the deputy commissioner awarded claimant costs in the amount of \$656.65, which includes the cost of the filing fee (\$100.00), deposition transcription fee (\$93.99), one-third of the cost of claimant's functional capacity evaluation (FCE) (\$229.33), and one-third of the cost of claimant's supplemental independent medical evaluation (IME) (\$233.33). The deputy commissioner declined to award any portion of the claimant's vocational expenses.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained permanent disability. Claimant further asserts it should be found on appeal he sustained 60 percent industrial disability as a result of the work injury. Finally, claimant asserts he is entitled to additional costs, including the cost for the preparation portion of the FCE report (\$229.33), and a portion of the costs related to claimant's vocational report (\$865.60) and supplemental IME report (\$165.00). It is noted the deputy commissioner did award \$229.33 for one-third of the total FCE fee.

Defendants assert on appeal the deputy did not err in finding claimant failed to establish permanent disability. Defendants further assert if permanency is established, claimant sustained minimal, if any, industrial disability. Defendants assert claimant is not entitled to additional costs, and defendants assert the deputy commissioner's award of costs should be reduced or offset entirely. Defendants argue this is due to a claimed credit for defendants' "unrequired payment" of claimant's initial IME, or alternatively, because of the failure to itemize the cost for report preparation.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the proposed arbitration decision filed on March 29, 2019, that relate to issues properly raised on intra-agency appeal are affirmed in part without additional comment and are reversed in part.

I affirm the deputy commissioner's finding that claimant is entitled to receive temporary total disability benefits from October 13, 2015, through March 9, 2016. I affirm the deputy commissioner's finding that claimant is entitled to receive temporary partial disability benefits from March 10, 2016, through May 31, 2016. I affirm the deputy commissioner's finding that claimant failed to meet his burden of proof to establish that the stipulated work injury was a cause of permanent disability. I affirm the deputy commissioner's finding that the issues of extent of industrial disability and commencement date for PPD benefits are therefore moot. I affirm the deputy commissioner's finding that defendants are not responsible for the requested medical expenses, as claimant failed to prove the requested expenses are related to a compensable condition, and I affirm the deputy commissioner's finding that claimant failed to establish that the unauthorized case was beneficial. I affirm the deputy

commissioner's finding that defendants are entitled to receive a credit for overpaid temporary total disability benefits in the amount of \$1,129.94. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits for defendants' alleged nonpayment of PPD benefits, as no PPD benefits are owed. I affirm the deputy commissioner's finding that defendants are responsible for payment of interest on any unpaid benefits. I affirm the deputy commissioner's finding that defendants are not entitled to receive a credit for payment of claimant's IME.

I find the deputy commissioner provided a well-reasoned analysis of the issues noted above and I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I respectfully reverse the deputy commissioner's order taxing defendants with costs of \$229.33 for one-third of the FCE, and \$233.33 for one-third of claimant's supplemental IME, with the following additional analysis:

The FCE was not ordered by a treating or evaluating physician. Therefore, the cost cannot be assessed as payment of medical expenses under Iowa Code section 85.27. As such, claimant submitted a request for one-third of the expense as a cost. Claimant also submitted a request for payment of the supplemental IME report prepared by Geoffrey McCullen, M.D. However, claimant did not provide an itemized invoice with respect to the supplemental IME report or the FCE report. (See Attachments to Hearing Report) As the invoices are not itemized, the deputy commissioner awarded one-third of the cost of each report.

Under the DART case, the only allowable taxable costs are the reports themselves, not the underlying examination. DART v. Young, 867 N.W.2d 839, 846-847 (Iowa 2015). The claimant has the burden to establish which portion of the charges associated with those reports are taxable as costs under rule 876 IAC 4.33(6). As claimant has not provided the necessary information to determine what portion of the charges are taxable, he has not met that burden. As such, no portion of the fee for the supplemental IME report, nor the FCE, should be taxed as a cost in this case. Therefore, I respectfully reverse the deputy commissioner's award of \$229.33 for one-third of the cost of claimant's FCE, and \$233.33 for one-third of the cost of claimant's supplemental IME. The remainder of the deputy commissioner's decision regarding costs is affirmed without additional comment.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 29, 2019, is affirmed in part and reversed in part.

Defendants shall pay claimant temporary total disability benefits at the weekly rate of four hundred thirty-five and 56/100 dollars (\$435.56) from October 13, 2015, through March 9, 2016.

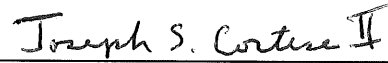
Defendants shall pay claimant temporary partial disability benefits from March 10, 2016, through May 31, 2016.

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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount one hundred ninety-three and 99/100 dollars (\$193.99) (one hundred and no/100 dollars (\$100.00) filing fee plus ninety-three and 99/100 dollars (\$93.99) transcription fee) and the parties shall split 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 6th day of April, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Brian S. Rhoten Via WCES

Matthew R. Phillips Via WCES