

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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RAODA HAGAR,

Claimant,

vs.

STAFF MANAGEMENT  
SOLUTIONS, LLC,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5064069

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1803.01;  
2501; 2502; 2701; 2907;  
3202; 3203; 5-9998

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Claimant Raoda Hagar appeals from an arbitration decision filed on September 26, 2019. Defendant Second Injury Fund of Iowa (the Fund) cross-appeals. Defendants Staff Management Solutions, LLC, employer, and its insurer, New Hampshire Insurance Company, respond to the appeal. The case was heard on June 4, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 28, 2019.

The deputy commissioner found claimant carried her burden of proof to establish she sustained a first qualifying scheduled member injury to her bilateral eyes on January 22, 2014, and a second qualifying injury to her left lower extremity on October 6, 2016, for the purpose of receiving benefits from the Fund. The deputy commissioner found the combination of the two injuries entitles claimant to receive 30 percent industrial disability, 150 weeks of permanent partial disability (PPD) benefits, from the Fund, with appropriate credits for the two injuries totaling 124 weeks, with the result that claimant is entitled to receive the remaining balance of 26 weeks of PPD benefits from the Fund.

The deputy commissioner found claimant sustained permanent scheduled member functional disability of 16 percent of claimant's bilateral eyes for the January 22, 2014, first qualifying injury, which is 80 weeks of PPD benefits. The deputy commissioner found claimant sustained permanent scheduled member functional

disability of 20 percent of claimant's left lower extremity for the October 6, 2016, second qualifying injury, which is 44 weeks of PPD benefits. Adding those two impairment ratings together results in the total credit of 124 weeks of PPD benefits which the Fund is entitled to receive, with the result that the deputy commissioner found that the Fund owes claimant 26 weeks of PPD benefits for the 30 percent industrial disability which the deputy commissioner found results from the combination of the two injuries.

The deputy commissioner found defendants employer and insurer owe claimant 44 weeks of PPD benefits for the October 6, 2016, second qualifying injury to claimant's left lower extremity which is the stipulated work-related injury which is the basis for claimant's claim in this matter.

The deputy commissioner found claimant failed to carry her burden of proof to establish that the permanent disability from the October 6, 2016, work injury extends beyond her left lower extremity into her back and her body as a whole. The deputy commissioner found claimant failed to prove she is entitled to receive industrial disability benefits from defendants employer and insurer for the October 6, 2016, work injury. The deputy commissioner found claimant is not entitled to alternate medical care from defendants employer and insurer for claimant's alleged back condition. The deputy commissioner found claimant is not entitled to payment by defendants employer and insurer for the requested past medical expenses itemized in Exhibit 11 for the treatment of claimant's alleged back condition. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants employer and insurer in the amount of \$1,970.00 for the cost of the independent medical evaluation of claimant performed by Sunil Bansal, M.D. on March 21, 2019.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's permanent disability for the October 6, 2016, work injury does not extend beyond claimant's left lower extremity into her back and body as a whole, and in finding claimant is not entitled to receive industrial disability benefits from defendants employer and insurer for the October 6, 2016, work injury. In the alternative, claimant asserts if it is found on appeal that the permanent disability from the October 6, 2016, work injury does not extend into her back and body as a whole, that the award for industrial disability against the Fund should be increased substantially. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to alternate medical care from defendants employer and insurer for claimant's alleged back condition. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants employer and insurer for the requested past medical expenses for the treatment of claimant's alleged back condition.

The Fund asserts on cross-appeal that the deputy commissioner erred in finding claimant is entitled to receive benefits from the Fund. The Fund asserts the deputy commissioner erred in finding claimant's permanent disability for the October 6, 2016, work injury does not extend beyond claimant's left lower extremity into her back and body as a whole, and in finding claimant is not entitled to receive industrial disability benefits from defendants employer and insurer. In the alternative, the Fund asserts if it

is found on appeal that claimant's disability for the October 6, 2016, work injury does not extend beyond claimant's left lower extremity into her back and body as a whole, and if it is found claimant is entitled to receive benefits from the Fund, the award for industrial disability against the Fund for the combination of the first qualifying injury and the second qualifying injury should be reduced substantially.

Defendants employer and insurer assert on appeal that the arbitration decision should be affirmed in its entirety.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and 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 September 26, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of 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 that claimant carried her burden of proof to establish she sustained a first qualifying scheduled member injury to her bilateral eyes on January 22, 2014, and a second qualifying injury to her left lower extremity on October 6, 2016, for the purpose of receiving benefits from the Fund. I affirm the deputy commissioner's finding that the combination of the two injuries entitles claimant to receive 30 percent industrial disability, 150 weeks of PPD benefits, from the Fund, with appropriate credits for the two injuries totaling 124 weeks, with the result that claimant is entitled to receive the remaining balance of 26 weeks of PPD benefits from the Fund.

I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of 16 percent of her bilateral eyes for the January 22, 2014, first qualifying injury, which is 80 weeks of PPD benefits. I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of 20 percent of her left lower extremity for the October 6, 2016, second qualifying injury, which is 44 weeks of PPD benefits. I affirm the deputy commissioner's finding that the total credit which the Fund is entitled to receive is 124 weeks of PPD benefits, with the result that the Fund owes claimant 26 weeks of PPD benefits for the remaining balance of the 30 percent industrial disability which the deputy commissioner found results from the combination of the two injuries.

I affirm the deputy commissioner's finding that defendants employer and insurer owe claimant 44 weeks of PPD benefits for the October 6, 2016, second qualifying injury to claimant's left lower extremity.

I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof to establish that the permanent disability from the October 6, 2016, work injury extends beyond her left lower extremity into her back and her body as a whole. I affirm the deputy commissioner's finding that claimant failed to prove she is entitled to receive industrial disability benefits from defendants employer and insurer for the October 6, 2016, work injury. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care from defendants employer and insurer for claimant's alleged back condition. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants employer and insurer for the requested past medical expenses for the treatment of claimant's alleged back condition. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants employer and insurer in the amount of \$1,970.00 for the cost Dr. Bansal's IME.

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 September 26, 2019, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant forty-four (44) weeks of permanent partial disability benefits at the rate of one hundred ninety-seven and 92/100 dollars (\$197.92) per week commencing on July 11, 2018.

Defendants insurer and employer shall receive credit for all benefits they previously paid.

Defendants employer and insurer 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).

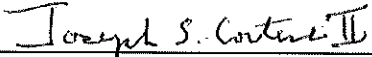
The Fund shall pay claimant twenty-six (26) weeks of permanent partial disability benefits at the rate of one hundred ninety-seven and 92/100 dollars (\$197.92) commencing one hundred twenty-four (124) weeks after July 11, 2018.

Defendants employer and insurer shall reimburse claimant in the amount of one thousand nine hundred seventy and 00/100 dollars (\$1,970.00) for the costs associated with Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants employer and insurer and the Fund shall file subsequent reports of injury as required by this agency.

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

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Andrew Bribresco (via WCES)

Robert Gainer (via WCES)

Jonathan Bergman (via WCES)