

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LONNIE FOSTER,

Claimant,

vs.

NASH FINCH CO.,

Employer,

and

XL SPECIALTY INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

OCT 10 2016

WORKERS' COMPENSATION

File No. 5045206

A P P E A L

D E C I S I O N

Head Note Nos.: 1803; 1804; 2500;
4000; 4100

Defendants Nash Finch Co., employer, and XL Specialty Insurance Co, its insurer, appeal from an arbitration decision filed on May 12, 2015. Claimant Lonnie Foster responds to the appeal. The case was heard on October 1, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 6, 2014.

The deputy commissioner awarded claimant permanent total disability benefits from August 7, 2012, for the stipulated work-related injury which occurred on August 6, 2012. The deputy commissioner awarded defendants a credit for the prior benefits they have paid in this case. The deputy commissioner awarded claimant ongoing psychiatric treatment for the work injury. The deputy commissioner awarded claimant the past medical expenses of Bradley J. Beer, M.D., as set out in Exhibit 1, pages 152 – 187 and Exhibit 11, pages 1 – 6. The deputy commissioner awarded claimant \$5,000.00 in penalty benefits. Pursuant to Iowa Code section 85.39, the deputy commissioner ordered defendants to reimburse claimant for the independent medical evaluation (IME) fee of Stanley Mathew, M.D., in the amount of \$1,288.50. The deputy commissioner ordered defendants to reimburse claimant in the amount of \$2,749.50 for the vocational report of Kent Jayne, M.A., and \$100.00 for claimant's filing fee. Pursuant to Iowa Code section 85.39, the deputy commissioner found claimant is not entitled to reimbursement for the psychiatric IME fee of Mark Mittauer, M.D.

Defendants assert on appeal that the deputy commissioner erred in awarding claimant permanent total disability benefits. Defendants also assert the deputy commissioner erred in awarding penalty benefits.

Claimant asserts on appeal that the arbitration award should be affirmed in its entirety. Claimant also asserts he should be awarded reimbursement for the psychiatric IME fee of Dr. Mittauer.

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 May 12, 2015, 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 findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's award of permanent total disability benefits. I affirm the deputy commissioner's award of \$5,000.00 in penalty benefits. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement for the psychiatric IME fee of Dr. Mittauer. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of May 12, 2015, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits for an indefinite period of time during the period of claimant's disability at the rate of eight hundred seventy six and 89/100 dollars (\$876.89) per week from August 7, 2012.

Defendants shall have credit for the prior weekly benefits they have paid in this case.

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

Defendants shall provide claimant with ongoing psychiatric treatment for the work injury.

Defendants shall pay the past medical expenses of Dr. Beer as set out above.

Defendants shall pay claimant five thousand and no/100 dollars (\$5,000.00) in penalty benefits.

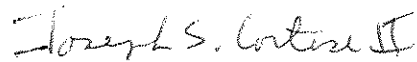
Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant for Dr. Mathew's IME fee in the amount of one thousand two hundred eighty eight and 50/100 dollars (\$1,288.50).

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant for Mr. Jayne's vocational report in the amount of two thousand seven hundred forty nine and 50/100 dollars (\$2,749.50), and one hundred and no/100 dollars (\$100.00) for claimant's filing fee.

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

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 10th day of October, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Thomas M. Wertz
Attorney at Law
PO Box 849
Cedar Rapids, IA 52406-0849
twertz@wertzlaw.com

D. Brian Scieszinski
Attorney at Law
801 Grand Avenue, Ste. 3700
Des Moines, IA 50309-2727
Scieszinski.brian@bradshawlaw.com