

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY GRIFFEY (Dec.) and AUSTIN
ALAN ADAMS by Mother, Trustee,
Guardian ROSEANN ADAMS,

Claimant,

vs.

WESTERN EXPRESS, INC.,

Employer,

and

PA MANUFACTURERS ASSN. INS. CO.,

Insurance Carrier,
Defendants.

File No. 5062272.01

REVIEW-REOPENING

DECISION

Head Note Nos: 1805, 1901, 2907

STATEMENT OF THE CASE

Claimant, Austin Adams, by mother, trustee, guardian Roseann Adams, filed a petition seeking review-reopening of a prior decision of this agency. Specifically, claimant seeks to review and reopen an April 30, 2020 arbitration decision, which was affirmed by the Iowa Workers' Compensation Commissioner on November 5, 2020.

In the underlying arbitration decision, Austin Adams was awarded benefits as a dependent of Gary Griffey, deceased. The benefits were to continue until December 15, 2022 or as long as Austin was enrolled in school. Austin is no longer enrolled in school. Benefits were paid through December 15, 2022. Claimant filed a review-reopening petition on April 6, 2022 seeking additional weekly benefits due to his alleged disability. Hearing was held via Zoom in the virtual/Des Moines, Iowa venue on August 16, 2023.

The parties filed a hearing report at the commencement of the review-reopening hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this review-reopening decision. The parties are now bound by their stipulations.

Roseann Redmond¹ (f/k/a Roseann Adams) and Austin Adams were the only witnesses to testify live at the time of the review-reopening hearing. The evidentiary record also includes Joint Exhibits 1-7, Claimant's Exhibits 1-10 and Defendants' Exhibits A-D. All exhibits were received into the evidentiary record without objection. The evidentiary record closed at the conclusion of the arbitration hearing. The parties submitted post-hearing briefs on September 18, 2023.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether Austin Adams is entitled to workers' compensation death benefits.
2. Whether costs should be assessed against the defendants.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

At the time of the underlying arbitration proceeding, Austin Adams was a minor and was awarded benefits as a dependent of Gary Griffey, deceased. The benefits were to continue until he reached the age of 18, or until the age of 25 if he was enrolled as a full-time student in an accredited educational institution, or if he is determined in the future to be incapacitated from earning for as long as he remained incapacitated from earning.

Roseann testified that prior to Gary Griffey's death he had a relationship with his son, Austin. Gary also provided financial support to Austin. Roseann was involved in receiving the workers' compensation payments from the prior award for Austin. She received those benefits and took control of them. The weekly benefits for Austin stopped mid-December 2022. (Hearing Transcript, page 24)

At the time of the review-reopening hearing Austin was 19 years old. He was living with his mother, Roseann Redmond. Austin does not have a driver's license. He failed the written test and had since given up on getting his license. (Tr. pp. 22-23)

Austin does not have a high school diploma. He attended approximately 2 years of high school. When he was in middle school he earned As, Bs, and Cs. (Tr. pp. 25, 46-47) Unfortunately, his dad passed away and Austin believes this is when things began to go downhill. While he was in school, he was in a special education plan called GLASS and an IEP. The GLASS program is for kids that have special needs and allows for one-on-one instruction. Through that program Austin had an IEP which assessed where he was in his learning and what he needed help in. Austin was held back a few times in school because of his IEP; he was not learning fast enough to be in

¹ Roseann is in the process of obtaining a divorce and changing her last name back to Adams. At the time of the review-reopening hearing her legal name was still Roseann Redmond.

the grade he was supposed to be in. In ninth grade he received all Fs. He then attended an alternative school where students attended half-days. The alternative school had the capacity to work with the students on a one-on-one basis. However, this school did not work for Austin either. He could not stay focused or concentrate and he became very aggravated. The vice-principal of the school recommended that Austin drop out, so that is what Austin did. Austin then tried an online school, but he could not keep his grades up which stressed him out, so he dropped out of that too. (Tr. pp. 14-16, 37-39; Joint Exhibits 4 and 5)

Austin has ADHD and explosive disorder. Roughly a year and a half after his father passed away Austin was diagnosed with PTSD. He is borderline bipolar. In the past he has been prescribed Vyvanse for his ADHD and Intuniv to help him sleep at night. He was not on these medications at the time of the review-reopening hearing but was hoping to see a doctor to get back on his medications. (Tr. pp. 14-18, 52-53; JE3)

Austin has a lot of anger issues. When he gets frustrated, instead of taking it out on another person Austin will punch walls or trees or walk away from the situation. He hit a wall and badly bruised his wrist which required medical attention. When Austin is upset and walks off, his Mom has learned to leave him alone to let him calm down. After he has calmed down, Austin will apologize and will talk about the situation. Roseann testified that when Austin gets mad, he explodes. She has had to replace a few walls in her home. Roseann testified that Austin's ADHD and anger issues have affected his ability to stay in school. In order for Austin to understand what is being said to him, things must be explained to him in particular ways. If he does not understand what is being told to him, he gets frustrated and explodes. Roseann has tried to talk to Austin about returning to school, but he does not think he can remain focused. She believes all of his conditions have also affected his ability to work. (Tr. pp. 16-19)

Austin testified that his explosive disorder causes him to have a light trigger for his anger problems. Something as simple as two little words that he does not like will upset him and then he ends up causing problems. Due to his explosive disorder, he tries not to be around people. When Austin is in large crowds, he feels claustrophobic, and the smallest thing will cause him to snap. His inability to be around groups of people caused him trouble in school. He does not like to sit still unless he is alone in his room playing video games. He does not like to be around people, and he does not like to be questioned. He described himself as having a low tolerance of people. (Tr. pp. 14-15, 39-41)

Austin has attempted to work but has not been successful. He worked at Megablast for approximately 2 weeks. He had this job while he was still attending school. He worked approximately 4 hours per day. He worked there setting up games before the business opened. The business had a grand opening, but then closed shortly after it opened. (Tr. pp. 26-27, 33, 41)

Austin also tried working at Wabash National which is a factory that builds semitrailers. He ran three different parts of a line. He was confused about his job, he

asked for help, but he said his coordinator got mouthy, Austin got mad, and walked out. He worked there for 1 or 2 months. (Tr. pp. 19-20, 41-42)

Austin went to Pro Resources to try to find employment. They sent him some jobs, but he was not qualified for the jobs they gave him. One example of such a job was as a forklift operator. (Tr. pp. 45-46)

Roseann was able to get him a job at Toyota where she works. At Toyota, Austin ran 3 or 4 different sections of parts for a car company. This job ran on time limits. According to Austin, if he did not have a part out in 10 minutes, then he was behind and had to play catch-up. Every time he would ask for help, no one was willing to help him. He got mad and he walked out. The job at Toyota began and ended in February 2023. Roseann talked to Austin's supervisor at Toyota and tried to get Austin his job back. However, the supervisor told her that Austin will not take instructions and it was probably best that Austin not come back to Toyota. (Tr. pp. 29, 31, 42)

Roseann is aware of Austin's work history and the problems he had with his prior jobs. She is not aware of a job that Austin would be able to handle without getting frustrated and exploding on people. She testified that Austin even tried self-employment. He bought mobile homes that he hoped to fix and flip. However, the mobile homes were in such bad shape that they could not be repaired. Austin lost money on that endeavor. (Tr. pp. 19-21; 43-44)

According to Roseann, Austin continues to have trouble with his explosive disorder. He has a girlfriend who lives with Austin and his mother. Austin does not have any other friends and is a loner. (Tr. pp. 21-22)

Craig B. Rypma, Ph.D., a Licensed Clinical Psychologist, has issued several reports and testified via deposition. (JE7; Claimant's Exhibits 2-4) The first report Dr. Rypma issued is dated September 19, 2019. At that time, Austin was 15 years old. (Cl. Ex. 2, pp. 21-23)

On April 11, 2023, Dr. Rypma interviewed Austin Adams (19 years old) and Roseann Adams via Zoom. Dr. Rypma felt Austin continued to function quite sub-optimally. He continued to suffer short and long-term memory delay and Attention Deficit Hyperactivity Disorder (ADHD). Dr. Rypma noted discipline continued to be a problem, Austin continued to use profanity, and had anger issues. He continued with diagnoses of "Explosive Disorder, PTSD, and Bi-polar disorder." Dr. Rypma noted that Austin had trouble concentrating and had headaches. (Cl. Ex. 3, pp. 30-32) Additionally, Dr. Rypma stated that Austin's IQ was "very low and he is borderline retarded." (Cl. Ex. 3, p. 31)

Dr. Rypma stated that Austin was not able to maintain a job due to his disabilities. Ultimately, he opined,

[t]o a reasonable degree of psychological opinion Austin has not and will not in the future improve sufficiently to be able to function and interact with

the public or in work life in a manner that will afford him the opportunity to work. He will not be able to sustain himself independent of support and that he remains disabled by his emotional conditions.

(Cl. Ex. 3, p. 32)

On January 2, 2020, the defendants took the deposition of Dr. Rypma. (JE7) Dr. Rypma noted Austin's academic records showed a progressive deterioration in his academic and behavioral performance. The records demonstrated Austin suffered from short-term and long-term memory delay and ADHD in elementary school. There were discipline problems. Austin used profanity, violated dress code regulations, and was frequently tardy and/or absent from school. Austin's grades improved briefly in grades 7 and 8 but deteriorated significantly in the following years. He received Ds and Fs. He was diagnosed with PTSD and anxiety disorder. He also demonstrated intellectual deficits. (JE7, pp. 80-83) During the deposition defendants questioned Dr. Rypma about Austin's lack of motivation and refusal to do work. Dr. Rypma felt that any motivational deficit was the direct result of intellectual deficits, emotional disabilities, and mental health diagnoses. (JE7, pp. 59-78)

On June 23, 2023, Dr. Rypma authored a missive stating he had reviewed the depositions of Austin Adams and Roseann Redmond which were taken in May 2023. His impressions of Austin in terms of his capacity to work had not changed. Dr. Rypma stated,

I believe that based on what I now see in terms of Austin's adjustment certainly confirm the impressions that I made in the original report dated September 19, 2019. That is, Austin will not improve such that in the future he will be able to work, interact with the public in a manner that will afford him the opportunity to live without supplemental assistance. He remains disabled by his emotional condition, exacerbated by the death of his father as well as other social experiences he has endured as the result of his condition. It remains my opinion that Austin will not improve in the future.

(Cl. Ex. 4, p. 33)

At the request of claimant's counsel, Carma Mitchell, M.S., Vocational Consultant, issued a vocational opinion on September 23, 2019. She opined that an individual, that was markedly limited in areas listed in her report would not be able to sustain full-time employment. Those areas listed included areas that Austin is markedly limited in. (Cl. Ex. 6, pp. 37-38)

The defendants took Ms. Mitchell's deposition on January 7, 2020. (JE6) In her deposition she clarified her opinion from September 23, 2019. She reiterated that she believes Austin would not be able to sustain full-time work. (JE6)

Ms. Mitchell issued a vocational opinion report on April 18, 2023. (Cl. Ex. 7, pp. 39-42) She had reviewed the April 12, 2023 report of Dr. Rypma and also interviewed Austin and Roseann via telephone. In her report Ms. Mitchell addressed the vocational implications of Austin's education, work attempts, activities of daily living, and functional abilities. Ms. Mitchell stood by her opinion that if a person is markedly limited in the listed areas, they would not be able to sustain full-time competitive employment. The listed areas included the ability to: maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances; sustain an ordinary routine without special supervision; work in coordination with or in proximity to others without being distracted by them, make simple work-related decisions; complete a normal workday without intrusions from psychological based symptoms and to perform at a consistent pace; accept instructions and respond appropriately to criticism from supervisors; maintain socially appropriate behavior; respond appropriately to changes in the work setting. (Cl. Ex. 7, p. 41) In Ms. Mitchell's experience, individuals who cannot sustain attention for two-hour segments or if a person is missing work 2 days per month or coming in late or leaving early on an ongoing basis would not be tolerated. She also believed that individuals who need extra breaks, work at a slow pace, are not capable of making simple work decisions, could not respond to work changes, or require ongoing special supervision would not be able to maintain competitive employment. Finally, Ms. Mitchell stated that to be competitively employed on a sustained basis an individual would have to be able to take instruction and criticism, get along with co-workers, and be able to perform tasks within a schedule. (Cl. Ex. 7, p. 42)

Ms. Mitchell was provided the deposition transcripts of Austin and Roseann. She also reviewed Dr. Rypma's June 23, 2023 letter and the Mental Residual Functional Capacity Assessment Form completed by Dr. Rypma. On June 26, 2023, Ms. Mitchell indicated that she had reviewed these documents and her opinions had not changed. She stated, "[t]aking into consideration the marked limitations for Austin Adams which are outlined by Dr. Rypma, Mr. Adams would not be able to sustain full-time competitive employment." (Cl. Ex. 8, p. 43)

Defendants argue biases and deficiencies in the opinions of both Dr. Rypma and Ms. Mitchell. However, defendants do not offer any expert opinions to rebut the opinions of Dr. Rypma and Ms. Mitchell. I find the opinions of Dr. Rypma and Ms. Mitchell are unrebutted and persuasive.

Additionally, defendants argue that Austin was not terminated from either Wabash or Toyota. Austin was the one who terminated his employment. Defendants contend that Austin is not incapacitated from work; rather, he lacks the will or the motivation to work. However, there is no evidence in the record to support the contention that Austin's unemployment is simply due to a lack of motivation. Rather, Dr. Rypma testified that any motivational deficit was the direct result of intellectual deficits, emotional disabilities, and mental health diagnoses. (JE7, pp. 59-78) I do not find defendants' argument to be persuasive.

Based on the evidentiary record, I find that Austin is mentally incapacitated from earning. There is simply no evidence in the record that Austin is currently capable of earning. Rather, the preponderance of the evidence demonstrates that he is mentally incapacitated from earning.

CONCLUSIONS OF LAW AND REASONING

Claimant brings this review-reopening proceeding. A review-reopening proceeding is appropriate whenever there has been a substantial change in condition since a prior arbitration award or settlement. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). Under Iowa Code section 86.14(2), this agency is authorized to reopen a prior award or settlement to inquire about whether the condition of the employee warrants an end to, diminishment of, or increase of compensation. Id.

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). At the time of the underlying arbitration decision Austin was 15 years old. Weekly benefits were to continue to Austin until he reached the age of 18, or until the age of 25 if he is enrolled as a full-time student in any accredited educational institution, or if he is determined in the future to be incapacitated from earning for as long as he remains incapacitated from earning. See Griffey v. Western Express, Inc., File No. 5062272 (App. Nov. 5, 2020).

The Code states that a dependent shall be one actually dependent or mentally or physical incapacitated from earning. The Code further provides that such status shall be determined in accordance with “the facts as of the date of the injury.” Iowa Code section 85.44. Defendants argue that because the ability to earn is determined based on facts existing at the time of the original injury, there can be no “change of condition” unamendable to a review-reopening decision. Defendants’ argument is not persuasive. If what defendants argue were true, then an individual’s status as a dependent could never change.

Defendants also contend that this review-reopening proceeding is not appropriate because it seeks a redetermination of an issue that was raised but not adjudicated previously; specifically, the issue of whether Austin was incapacitated from earning. Defendants’ argument is not persuasive. The issue of whether Austin was incapacitated from earning was not relevant at the time of the arbitration hearing because Austin was under the age of 18.

Based on the above findings of fact, I conclude that Austin has reached the age of 18 and is no longer enrolled as a full-time student in any accredited educational institution. Thus, I conclude that he has met his burden to show that there has been a substantial change in condition since the original award. I conclude claimant has established entitlement to reopening, or increase, of his prior award. Iowa Code section 86.14(2).

We now turn to the issue of whether Austin is entitled to additional benefits. Regarding payment to actual dependents, the Iowa Code states:

In all other cases, a dependent shall be one actually dependent or mentally or physically incapacitated from earning. Such status shall be determined in accordance with the facts as of the date of the injury. In such cases if there is more than one person, the compensation benefit shall be equally divided among them. If there is no one wholly dependent and more than one person partially dependent, the compensation benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency.

Iowa Code § 85.44.

Austin contends that he is physically or mentally incapacitated from earning. Based on the above findings of fact, I conclude that Austin has demonstrated by a preponderance of the evidence that he is mentally incapacitated from earning. As such, he has demonstrated entitlement to weekly dependent benefits, commencing on December 16, 2022, and continuing as long as he remains incapacitated from earning.

Under Iowa law, payments must be made to a trustee for minors or dependents. The Code states:

1. When a minor or a dependent who is mentally incompetent is entitled to weekly benefits under this chapter or chapter 85A or 85B, payment shall be made to the parent, guardian, or a conservator, who shall act as trustee, and the money coming into the trustee's hands shall be expended for the use and benefit of the person entitled to it under the direction and orders of a district judge. The trustee shall qualify and give bond in an amount as the district judge directs, which may be increased or diminished from time to time.

2. If the domicile or residence of the minor or dependent who is mentally incompetent is outside the state of Iowa, the workers' compensation commissioner may order and direct that benefits to the minor or dependent be paid to a guardian, conservator, or legal representative duly qualified under the laws of the jurisdiction wherein the minor or dependent shall be domiciled or reside. Proof of the identity and qualification of the guardian, conservator, or other legal representative shall be furnished to the workers' compensation commissioner.

Iowa Code section 85.49.

Austin Adams is 19 years old and resides with his mother in Indiana. Austin is entitled to benefits. His benefits should resume as of December 16, 2022. A trustee shall be established and the payments shall be made to the trustee. The trustee must

comply with the requirements of Iowa Code section 85.49, including a bond in the amount as directed by a district court judge.

All weekly benefits shall be paid at the weekly rate of four hundred fifty-four and 18/100 dollars (\$454.18). The weekly benefit payments shall be divided equally among Curtis Griffey, Devon Griffey, Matthew Griffey, and Austin Adams.

Finally, each party submits a statement of costs and seeks reimbursement of those costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40.

Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. I find that claimant was successful in his claim. Therefore, exercising the agency's discretion, I conclude that an assessment against the defendants is appropriate.

First, claimant seeks costs in the amount of \$100.00 for the filing fee. I find this is an appropriate cost under 876 IAC 4.33(7).

Second, claimant seeks an assessment of costs in the amount of \$1,575.00 for the review of records and writing of two reports by Dr. Rypma. Claimant also seeks an assessment of costs in the amount of \$525.00 for review of records and writing of two reports by Carma Mitchell. Pursuant to Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), I conclude that only charges related to drafting of a report to avoid the necessity of trial testimony are legitimately taxed as costs. Although there is no meaningful way to apportion out the expenses associated with drafting a report versus reviewing records, it appears this agency must do just that. See Fuller v. Bimbo Bakeries, U.S.A., File No. 20012896.01 (App. September 12, 2023). Dr. Rypma charged \$1,575.00 for reviewing records and writing two reports. I find the costs associated with preparation of two reports total \$1,100.00. Claimant is limited to no more than two doctors' or practitioners' reports. Therefore, I find claimant is not entitled to costs associated with Carma Mitchell's reports.

Thus, defendants are assessed costs totaling one thousand two hundred and no/100 dollars (\$1,200.00).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay weekly dependent benefits, commencing on December 16, 2022, to the trustee for claimant, Austin Adams. The payments shall continue for as long as he remains incapacitated from earning.

All weekly benefits shall be paid at the weekly rate of four hundred fifty-four and 18/100 dollars (\$454.18). The weekly benefit payments shall be divided equally among Curtis Griffey, Devon Griffey, Matthew Griffey, and Austin Adams.

Defendants shall receive credit for all weekly 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.

Defendants shall pay costs totaling one thousand two hundred and 00/100 dollars (\$1,200.00) as set forth above.

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 7th day of November, 2023.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Bruce Stoltze (via WCES)

Timothy Wegman (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.