

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELLIE RUSH,  
Claimant,

vs.

CATHOLIC HEALTH INITIATIVES  
d/b/a MERCY MEDICAL CENTER,  
Employer,

and

INDEMNITY INSURANCE CO. OF  
NORTH AMERICA,  
Insurance Carrier,  
Defendants.

File No. 5059072

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1803; 2206;  
2701; 2907; 5-9998

Defendants Catholic Health Initiatives, d/b/a Mercy Medical Center, employer, and its insurer, Indemnity Insurance Co. of North America, appeal from an arbitration decision filed on October 26, 2018. Claimant Kellie Rush responds to the appeal. The case was heard on September 28, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 19, 2018.

The deputy commissioner found claimant carried her burden of proof to establish she sustained permanent disability as a result of the stipulated injury which arose out of and in the course of her employment with defendant-employer on March 21, 2017. The deputy commissioner found claimant sustained 40 percent industrial disability as a result of the work injury, which entitles her to receive 200 weeks of permanent partial disability benefits commencing on June 21, 2017. The deputy commissioner found claimant is entitled to receive alternate medical care consisting of an evaluation with a pain specialist, and an evaluation at a spine clinic, at a facility or facilities other than Iowa Ortho and not associated with defendant-employer. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$887.67.

Defendants asserts on appeal that the deputy commissioner erred in finding claimant carried her burden of proof to establish she sustained permanent disability as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive any industrial disability benefits for the work injury. In the

alternative, defendants assert the award for industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive alternate medical care.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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 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 October 26, 2018, 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 permanent disability as a result of the March 21, 2017, work injury. I affirm the deputy commissioner's finding that claimant sustained 40 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care consisting of an evaluation with a pain specialist, and an evaluation at a spine clinic, at a facility or facilities other than Iowa Ortho and not associated with defendant-employer. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$887.67.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 26, 2018, is affirmed in its entirety.

Defendants shall pay claimant two hundred (200) weeks of permanent partial disability benefits at the stipulated weekly rate of four hundred eighty-two and 52/100 dollars (\$482.52), commencing on the stipulated commencement date of June 21, 2017.

Defendants shall be entitled to a credit for all weekly benefits paid to date.

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).

Defendants shall provide claimant with alternate medical care consisting of an evaluation with a pain specialist and an evaluation at a spine clinic at a facility or facilities other than Iowa Ortho and not associated with defendant-employer.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of eight hundred eighty-seven and 67/100 dollars (\$887.67), 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 24<sup>th</sup> day of January, 2020.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Channing L. Dutton      Via WCES

Kent M. Smith            Via WCES