BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DWIGHT FRAZIER, Claimant, vs. FAREWAY STORES, INC., Employer, And NATIONWIDE MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5060201, 5060202, 5060203, 5060204, 5060205, 5060206, 5060207, 5060208, 5060209, 5062876 APPEAL DECISION Head Note Nos: 1402.30; 1802: 2206; 2209; 2501; 2907; 4000.2; 5-9998

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WORKERS' COMPENSATION

Defendants Fareway Stores, Inc., employer, and its insurer, Nationwide Mutual Insurance Company, appeal from an arbitration decision filed on July 18, 2018. Claimant Dwight Frazier cross-appeals. The case was heard on February 15, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 23, 2018.

This case consists of ten consolidated files. In each individual file, the deputy commissioner found as follows:

In File No. 5060201, alleged injury date of May 24, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on May 24, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060202, alleged injury date of May 25, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on May 25, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060203, alleged injury date of May 26, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on May 26, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060204, alleged injury date of May 27, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on May 27, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060205, alleged injury date of May 28, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on May 28, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060206, alleged injury date of May 31, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on May 31, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060207, alleged injury date of June 2, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on June 2, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060208, alleged injury date of June 3, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on June 3, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5060209, alleged injury date of June 4, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any injuries which arose out of and in the course of his employment with defendant-employer on June 4, 2016. The deputy commissioner awarded claimant nothing in this file.

In File No. 5062876, alleged injury date of June 8, 2016, and/or July 20, 2016, involving alleged injuries to claimant's low back and mental health, the deputy commissioner found that while claimant was not a credible witness, he did carry his

burden of proof that he sustained a cumulative injury to his low back with a sequela injury to his mental health which arose out of and in the course of his employment with defendant-employer with a manifestation date of July 20, 2016. The deputy commissioner found that claimant provided notice to defendants of the work injury within 90 days as required by Iowa Code section 85.23. The deputy commissioner found claimant is entitled to receive healing period benefits from June 8, 2016, through June 9, 2016, and a running award of healing period benefits from July 21, 2016, through the present and ongoing until it is appropriate for healing period benefits to end. The deputy commissioner found claimant is entitled to receive $1,500.00 in penalty benefits from defendants for an unreasonable delay in the payment of healing period benefits. The deputy commissioner found claimant is entitled to receive alternate medical care in the form of treatment by Wesley Rayburn, M.D., for treatment of claimant's physical injuries moving forward, and the deputy commissioner found defendants shall be responsible for providing all care recommended by or through Dr. Rayburn, and for payment of all expenses related to that medical care. The deputy commissioner found claimant is entitled to receive alternate medical care at defendants' expense in the form of treatment by Richard Strickler, D.O., for the purpose of providing medication management unless Dr. Rayburn assumes or directs such care for claimant's physical injuries or until a psychiatrist or mental health professional assumes and manages medications for claimant's mental health treatment. The deputy commissioner found claimant is entitled to receive mental health counseling and treatment at defendants' expense with a psychiatrist on a face-to-face basis pursuant to the recommendations of evaluating psychiatrist James Gallagher, M.D. The deputy commissioner found claimant is entitled to have a treating psychiatrist authorized at defendants' expense through Eyerly Ball, if one is available and, if not available, the deputy commissioner ordered defendants to select and authorize a psychiatrist of defendants' choosing to provide face-to-face medical care for claimant. The deputy commissioner found claimant is entitled to payment by defendants for all medical expenses itemized or summarized in the attachments at Tabs C and D of the hearing report. The deputy commissioner found claimant is entitled to reimbursement from defendants for all medical mileage totaling $1,839.32 itemized or summarized in the attachments at Tabs E and F of the hearing report. The deputy commissioner found claimant is entitled to reimbursement from defendants in the amount of $31.57 for mileage itemized in the attachments at Tab A of the hearing report for claimant's mileage to attend an independent medical evaluation (IME) with David J. Boarini, M.D. The deputy commissioner found claimant is entitled to reimbursement from defendants pursuant to Iowa Code section 85.39 in the amount of $2,000.00 for the IME of claimant performed by Daniel McGuire, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of $6,263.93.

Defendants limit their appeal in this case to File No. 5062876 as follows:

Defendants assert the deputy commissioner erred in finding that while claimant was not a credible witness he did carry his burden of proof that he sustained a cumulative work-related injury to his low back with a sequela injury to his mental health

with a manifestation date of July 20, 2016. Defendants assert the deputy commissioner erred in finding claimant provided notice of the alleged work injury to defendants in a timely fashion as required by Iowa Code section 85.23. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits from June 8, 2016, through June 9, 2016, and a running award of healing period benefits from July 21, 2016, through the present and ongoing. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits. Defendants assert the deputy commissioner erred in making all other findings in claimant's favor in this matter.

Claimant asserts on appeal in File No. 5062876 that the penalty award should be increased substantially. On cross-appeal in all of the other files, claimant states the issues raised on cross-appeal were raised to preserve error and it is necessary to address those issues only if some aspects of the deputy commissioner's findings and award in File No. 5062876 are reversed on appeal.

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 July 18, 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 findings of fact, conclusions of law and orders in File Nos. 5060201, 5060202, 5060203, 5060204, 5060205, 5060206, 5060207, 5060208 and 5060209.

In File No. 5062876, I affirm the deputy commissioner's finding that while claimant was not a credible witness, he did carry his burden of proof that he sustained a cumulative work-related injury to his low back with a sequela injury to his mental health with a manifestation date of July 20, 2016. I affirm the deputy commissioner's finding that claimant provided notice of the alleged work injury to defendants in a timely fashion as required by Iowa Code section 85.23. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from June 8, 2016, through June 9, 2016, and a running award of healing period benefits from July 21, 2016, through the present and ongoing until it is appropriate for healing period benefits to end. I affirm the deputy commissioner's award of $1,500.00 in penalty benefits for defendants'

unreasonable delay in the payment of healing period benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care in the form of treatment by Wesley Rayburn, M.D., for treatment of claimant's physical injuries moving forward, and I affirm the deputy commissioner's finding that defendants shall be responsible for providing all care recommended by or through Dr. Rayburn, and for payment of all expenses related to that medical care. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care at defendants' expense in the form of treatment by Richard Strickler, D.O., for the purpose of providing medication management, unless Dr. Rayburn assumes or directs such care for claimant's physical injuries, or until a psychiatrist or a mental health professional assumes and manages medications for claimant's mental health treatment. I affirm the deputy commissioner's finding that claimant is entitled to receive mental health counseling and treatment at defendants' expense with a psychiatrist on a face-to-face basis pursuant to the recommendations of Dr. Gallagher. I affirm the deputy commissioner's finding that claimant is entitled to have a treating psychiatrist authorized at defendants' expense through Eyerly Ball, if one is available and, if not available, I affirm the deputy commissioner's order that defendants select and authorize a psychiatrist of defendants' choosing to provide face-to-face medical care for claimant. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for all medical expenses itemized or summarized in the attachments at Tabs C and D of the hearing report. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for all medical mileage totaling $1,839.32 itemized or summarized in the attachments at Tabs E and F of the hearing report. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants in the amount of $31.57 for mileage summarized in the attachments at Tab A of the hearing report for claimant's mileage expense to attend Dr. Boarini's IME. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants pursuant to Iowa Code section 85.39 in the amount of $2,000.00 for the cost of Dr. McGuire's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of $6,263.93.

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 July 18, 2018, is affirmed in its entirety.

Claimant takes nothing in File Nos. 5060201, 5060202, 5060203, 5060204, 5060205, 5060206, 5060207, 5060208, and 5060209.

In File No. 5062876, cumulative injury date of July 20, 2016:

Defendants shall pay claimant healing period benefits from June 8, 2016, through June 9, 2016, and from July 21, 2016 through the present and continuing into the future until the occurrence of the first factor outlined in Iowa Code section 84.34(1).

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 pay claimant one thousand five hundred dollars ($1,500.00) in penalty benefits pursuant to Iowa Code section 86.13.

Wesley Rayburn, M.D. shall be an authorized physician for treatment of claimant's physical injuries moving forward, and defendants shall be responsible for providing all care recommended by or through Dr. Rayburn and for payment of all expenses related to that medical care.

Richard A. Strickler, D.O., shall be an authorized physician for purposes of providing medication management unless and until Dr. Rayburn assumes or directs such care for claimant's physical injuries or until such time as a psychiatrist or a mental health professional assumes and manages any medications for claimant's mental health issues.

Defendants shall provide ongoing mental health counseling and treatment with a psychiatrist on a face-to-face basis pursuant to the recommendations of Dr. Gallagher.

Defendants shall authorize a psychiatrist through Eyerly Ball, if available. If not available, defendants shall select and authorize a psychiatrist of their choosing to provide face-to-face medical care for claimant.

Defendants shall reimburse claimant for all out-of-pocket medical expenses, shall pay or satisfy all outstanding medical expenses, liens, or subrogation claims, and shall hold claimant harmless for all medical expenses contained in or summarized in the attachments at Tabs C and D of the hearing report.

Defendants shall reimburse claimant for all medical mileage, as summarized in the attachments at Tabs E and F of the hearing report, totaling one thousand eight hundred thirty-nine and 32/100 dollars ($1,839.32).

Defendants shall reimburse claimant in the amount of two thousand dollars ($2,000.00), for the cost of Dr. McGuire's IME.

Defendants shall reimburse claimant's mileage expense in the amount of thirty-one and 57/100 dollars ($31.57), for claimant's attendance at Dr. Boarini's IME as itemized at Tab A of the hearing report.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration in the amount of six thousand two hundred sixty-three and 93/100 dollars ($6,263.93), 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 8th day of February, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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