

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEANN WOOD,

Claimant,

vs.

PHILLIPS HEALTHCARE.,

Employer,

And

ESIS, INC.,

Defendants.

FILED

APR 27 2018

File No.5049753

WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note Nos: 5-9999

STATEMENT OF THE CASE

On April 11, 2018, Joseph S. Cortese II, Iowa Workers' Compensation Commissioner, delegated the authority to the undersigned to issue the final agency decision on the intra-agency appeal currently pending before this agency. The decision in this matter shall be the final agency action.

This arbitration hearing was held on May 25, 2016 in Des Moines, Iowa. The parties filed post-hearing briefs. The case was deemed fully submitted on July 15, 2016. The deputy issued the arbitration decision on September 16, 2016.

The deputy commissioner determined claimant had a 60 percent industrial disability due to her work injury on March 21, 2013. The deputy also awarded travel expenses associated with medical mileage. Finally, the deputy awarded the second of two independent medical examinations performed by John D. Kuhnlein, D.O., MPH.

The order detailed in the arbitration decision is duplicated below:

ORDER

THEREFORE IT IS ORDERED:

That defendants shall pay unto claimant three hundred (300) weeks of permanent partial disability benefits at the rate of eight hundred thirty-six and 09/100 dollars (\$836.09) per week commencing on March 2, 2016.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall receive a credit for benefits previously paid.

That defendants shall reimburse claimant for travel expenses associated with medical mileage.

That defendants shall reimburse claimant for the May 2016 IME with Dr. Kuhnlein.

That defendants shall pay costs.

That defendants shall file the subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

On October 5, 2016, defendants filed a notice of appeal. The brief was filed on November 23, 2016. Claimant filed a notice of a cross appeal on October 17, 2016.

The record in this case was reviewed de novo. Both sides dictated the issues to be determined on appeal. See: Iowa Code section 17A.15; and Rule 876 IAC 4.28(7). The party who would suffer a loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule App. P. 6.14(6).

Defendants' brief argued the following issues on appeal:

1. Whether claimant sustained a sixty percent (60%) industrial disability.
2. Whether claimant is entitled to reimbursement of IME expenses pursuant to Iowa Code section 85.39 or alternatively pursuant to the cost rule.

Claimant filed her brief on December 13, 2016. She listed two issues. They were:

1. Claimant sustained a significant industrial loss.
2. Claimant is entitled to reimbursement of IME expenses as determined in the arbitration award.

On February 1, 2017, defendants filed a responsive/reply brief to claimant's cross-appeal. The arguments listed in the responsive/reply brief were:

1. Claimant's reported mental condition did not warrant an increase in claimant's industrial disability award.
2. Claimant is not entitled to reimbursement of Dr. Kuhnlein's IME expense.

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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of September 16, 2016 filed in this matter that relate to issues properly raised on intra-agency appeal and cross appeal without additional comment.

The issues raised by the parties were adequately and correctly addressed in the arbitration decision. It is concluded the presiding deputy commissioner's findings are well reasoned, supported by the greater weight of the evidence and are affirmed in all respects.

ORDER

IT IS THEREFORE ORDERED: the arbitration decision of September 16, 2016 is AFFIRMED.

As both the appeal and cross-appeal were unsuccessful, claimant and defendants shall share equally the costs of the appeal, including the costs of preparation of the hearing transcript.

Signed and filed this 27th day of April, 2018.



MICHELLE A. MCGOVERN
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Nathaniel R. Boulton
Attorney at Law
100 Court Avenue, Ste. 425
Des Moines, IA 50309
nboulton@hedberglaw.com

Steven M. Augspurger
Matthew R. Phillips
Attorneys at Law
801 Grand Ave., Ste. 3700
Des Moines, IA 50309-2727
Augspurger.steven@bradshawlaw.com
Phillips.matthew@bradshawlaw.com