

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

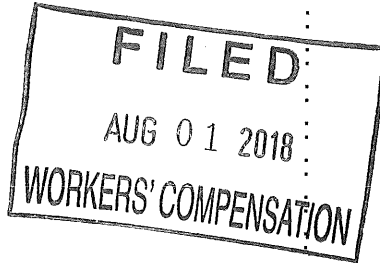
LOREN B. SCOTT,

Claimant,

vs.

ALPHA EXPRESS,

Employer,  
Defendant.



File No. 5058448

RULING ON CLAIMANT'S

MOTION TO RECONSIDER and

FOR NUNC PRO TUNC

On July 23, 2018, claimant filed a motion to reconsider and for nunc pro tunc. There is no resistance on file. The arbitration decision was issued on July 17, 2018.

The motion to reconsider requests clarification on the order assessing medical expenses against the defendants, as well as the total amount of reimbursement under Iowa Code section 85.39.

As it relates to the medical expenses, it appears that the amount in the order is a clerical error. The claimant sought medical expenses of \$1,832.05 as itemized in Exhibit 7. The order, on page 15, states that the defendant shall pay medical bills of \$1,543.76 as established in Exhibit 7. Claimant's Exhibit 7 separately itemizes the amount sought for out-of-pocket expenses in the amount of \$1,543.76, which was paid by the claimant and \$1,832.05 in unpaid balances owed to the medical providers. The claimant is entitled to a reimbursement of both the out-of-pocket medical expenses paid for by the claimant and the unpaid balances still owed.

Therefore, the order should be revised to correctly state:

That the defendant shall pay claimant's medical bills and costs in the amount of one thousand five hundred forty-three and 76/100 dollars (\$1,543.76) for out-of-pocket medical expenses claimant has paid and one thousand eight hundred thirty-two and 05/100 dollars (\$1,832.05) for the amounts that have been billed by medical providers, but have not been paid by any party at this time. Defendant to pay six thousand one hundred fifty-four and 29/100 dollars (\$6,154.29) as established in Exhibit 8, and eight hundred twelve and 35/100 dollars (\$812.35) in mileage.

The claimant also seeks a finding that claimant is entitled to a reimbursement of \$1,100.00, which represents the cost of the report of their independent medical examiner. However, pursuant to, Des Moines Area Reg'l Transit Auth. v. Young, 867

N.W.2d 839, (Iowa 2015), the medical examination reimbursable under Iowa Code section 85.39 cannot be also assessed under rule 876 IAC 4.33. Young, 876 N.W.2d 839, 847 (Iowa 2015). In Young, the Iowa Supreme Court held that section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing. Id. at 847. The Court also reminded the agency that 85.39 dictates what costs can be awarded. Id. at 847. The Court further explained that costs incurred in the hearing and reimbursement of fees and transportation expenses incurred for an examination are separate items governed by different parts of the Code. Id. at 846. The Court concluded that "a distinction exists under the statutory scheme between the taxation of costs incurred in a hearing and medical expenses incurred by an employee after the injury but prior to the hearing." Taken together, the directive of the Iowa Supreme Court appears to be that the sole part of an 85.39 fee that is reimbursable is the examination and that because the report is a cost incurred for an examination rather than for a hearing, the report is not reimbursable.

Until the Supreme Court directs the agency to find otherwise, only the examination is reimbursable for the independent medical evaluation.


For the nunc pro tunc portion of the motion, claimant requests that the penalty order be modified to assess the 30 percent penalty against all permanent and temporary benefits accrued after November 7, 2016. The decision and order references temporary permanent partial disability benefits. There is no such thing as temporary permanent partial disability benefits. There are temporary total disability and temporary partial disability benefits and permanent partial disability benefits.

The claimant is correct that the appropriate language would be a finding of a penalty of 30 percent of any accrued benefits owed after November 7, 2016, whether they are temporary or permanent partial disability benefits.

The language in the decision and the order should be modified to read as follows:

That defendant shall pay thirty (30) percent penalty benefits on all healing period and permanent partial disability benefits owed after November 7, 2016.

Signed and filed this 15<sup>th</sup> day of August, 2018.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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