

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

AUG 29 2017

WORKERS' COMPENSATION

GUADALUPE ALCANTARA
GUERRERO,

Claimant,

vs.

IOWA SELECT FARMS, LLP,

Employer,

and

ZURICH, N.A.,

Insurance Carrier,
Defendants.

File Nos. 5051321, 5051322

A P P E A L

D E C I S I O N

Head Note Nos: 1803, 2501, 2502, 2907

Claimant Guadalupe Alcantara Guerrero appeals from an arbitration decision filed on February 24, 2016. Defendants Iowa Select Farms, LLP, employer, and its insurer, Zurich, N.A., cross-appeal. The case was heard on November 17, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 15, 2015.

In File No. 5051321, stipulated injury date of July 3, 2013, the deputy commissioner found claimant failed to carry her burden of proof that she sustained any permanent disability as a result of a low back injury which arose out of and in the course of her employment with defendant-employer. The deputy commissioner awarded claimant nothing in the way of permanent partial disability (PPD) benefits for that injury.

In File No. 5051322, stipulated injury date of November 18, 2013, the deputy commissioner found claimant did carry her burden of proof that she sustained permanent disability as a result of a low back injury which arose out of and in the course of her employment with defendant-employer. The deputy commissioner awarded claimant 30 percent industrial disability for that injury, which entitles claimant to 150 weeks of PPD benefits commencing on November 19, 2014.

In both files, the deputy commissioner found claimant is entitled to payment by defendants for requested past medical expenses which the deputy commissioner found

were for treatment necessitated by the two work injuries. The deputy commissioner found claimant is entitled to payment, or reimbursement, by defendants pursuant to Iowa Code section 85.39 for the cost of the independent medical evaluation (IME) performed by John Kuhnlein, D.O., on June 30, 2015. The deputy commissioner also ordered defendant to pay claimant's requested costs of the arbitration proceeding except those costs associated with the functional capacity evaluation (FCE) performed by Todd Schemper, PT, on June 30, 2015.

In File No. 5051322, claimant asserts on appeal that the deputy commissioner erred in failing to award substantially more than 30 percent industrial disability.

In File No. 5051322, defendants assert on cross-appeal that the deputy commissioner's award of industrial disability should be substantially less than 30 percent.

In both files, Claimant asserts on appeal that the deputy erred in failing to award the requested costs associated with Mr. Schemper's June 30, 2015, FCE.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

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.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on February 24, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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.

In File No 5051321, I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained any permanent disability as a result of the July 3, 2013, work injury. I affirm the deputy commissioner's finding that claimant is entitled to nothing in the way of PPD benefits for that injury.

In File No 5051322, I affirm the deputy commissioner's finding that claimant did carry her burden of proof that she sustained permanent disability as a result of the November 18, 2013, work injury. I affirm the deputy commissioner's award of 30 percent industrial disability for the November 18, 2013, work injury, which entitles claimant to 150 weeks of PPD benefits commencing on November 19, 2014.

In both files, I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for requested past medical expenses for treatment necessitated by the two work injuries. I affirm the deputy commissioner's finding that claimant is entitled to payment, or reimbursement, by defendants for the cost of Dr. Kuhnlein's IME. I affirm the deputy commissioner's order that defendants pay claimant's requested costs of the arbitration proceeding except those costs associated with Mr. Schemper's June 30, 2015, FCE.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of February 24, 2016, is affirmed in its entirety.

Regarding File No. 5051321, injury date of July 3, 2013:

Claimant shall take nothing in this file in the way of permanent partial disability benefits.

Regarding File No. 5051322, injury date of November 18, 2013:

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the weekly rate of four hundred seventy-seven and 53/100 dollars (\$477.53) commencing on November 19, 2014.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Regarding both File No. 5051321 and File No. 5051322:

Defendants shall receive a credit for all benefits previously paid.

Defendants shall pay past medical expenses requested by claimant for treatment necessitated by the two work injuries as detailed in the arbitration decision.

Defendants shall pay, or reimburse claimant, for the cost of Dr. Kuhnlein's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's requested costs of the arbitration proceeding except those associated with Mr. Schemper's June 30, 2015, FCE as detailed in the arbitration decision, 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 this 29th day of August, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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