BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA BENNETT,

Claimant,

vs.

BRIDGESTONE AMERICAS, INC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5047745

A P P E A L

D E C I S I O N

Head Notes: 1108.20; 1108.5; 1803.1; 1804; 2907; 3200; 5-9998

Defendants Bridgestone Americas, Inc., employer, and its insurer, Old Republic Insurance Company, appeal from an arbitration decision filed on December 12, 2017. Claimant Rebecca Bennett cross-appeals. Defendant Second Injury Fund of Iowa (the Fund) responds to the appeal. The case was heard on September 29, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 7, 2016.

The deputy commissioner found claimant sustained permanent mental disability, which was causally related to the stipulated April 26, 2012, work injury involving claimant's left upper extremity. The deputy commissioner found claimant sustained 50 percent industrial disability, which entitles claimant to receive 250 weeks of permanent partial disability benefits. The deputy commissioner found claimant is not entitled to receive benefits from the Fund.

Defendants employer and insurance carrier assert on appeal that the deputy commissioner erred in finding claimant sustained permanent mental impairment causally related to the stipulated work injury. Defendants argue claimant's injury is limited to her left upper extremity.

Claimant asserts on cross-appeal that while the deputy commissioner correctly determined claimant sustained permanent mental impairment, the deputy commissioner erred in failing to find claimant is an odd-lot worker and is permanently and totally disabled. Claimant asserts in the alternative that if her injury is limited to her left upper extremity, she is entitled to receive benefits from the Fund.

The Fund asserts on appeal that the deputy commissioner correctly found claimant sustained permanent mental impairment and the decision should be affirmed. In the alternative, the Fund argues that if the injury is determined to be confined to claimant's left upper extremity, claimant failed to prove a qualifying first injury and is not entitled to receive benefits from the Fund.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. 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 December 12, 2017, that relate to the issues properly raised on intra-agency appeal with the following additional analysis:

Defendants employer and insurer argue claimant's current mental condition is not caused by the work injury. (Defendant-Employer's Appeal Brief, p. 14) Those defendants allege claimant was on medication for anxiety and depression prior to the work injury that occurred on April 26, 2012. Defendants employer and insurer rely on records from September, 2007, which discuss anxiety, a depressed mood, and a prescription for Celexa. (Exhibit J, pp. 17-19) However, there are no records in evidence showing treatment for any mental conditions after that, for more than four years leading up to the work injury on April 26, 2012, which is consistent with claimant's testimony she was free of those symptoms for about five years prior the work injury. (Hearing Transcript, p. 30)

Defendants employer and insurer also argue claimant first sought treatment for her mental condition after the injury occurred on September 24, 2013, implying this date is far removed from the injury date of April 26, 2012, and the condition is therefore unrelated. (Ex. I, pp. 8-10) However, claimant was treating with her primary care provider after the work injury and on November 1, 2012, her "active problems" began to include depression and anxiety. (Ex. 4, p 3) This is consistent with claimant's testimony that her mental symptoms began a few months after the occurrence of the work injury. (Tr. p. 31)

The deputy commissioner adequately addressed and considered the competing expert opinions of psychiatrists, Matt Mittauer, M.D. and Charles Wadle, D.O. I affirm the deputy commissioner's rejection of Dr. Wadle's opinions who inexplicably and contrary to the greater weight of the evidence, suggests claimant is malingering. Claimant was found by the deputy commissioner to have a strong work history and work

ethic. I affirm this finding based on claimant's long record of employment. I further specifically affirm the deputy commissioner's finding that claimant is not malingering. I also affirm the deputy commissioner's finding that claimant's testimony was credible.

Based on the opinion of Dr. Mittauer, I affirm the deputy commissioner's finding that claimant sustained a mental impairment causally related to the April 26, 2012, work injury.

I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund.

Concerning claimant's left upper extremity injury, she underwent two surgeries with Delwin Quenzer, M.D., to address her left distal radius fracture (Ex. E) After Dr. Quenzer's retirement, claimant's care was transferred to Jeffrey Rodgers, M.D. who sent claimant for a functional capacity evaluation (FCE). (Ex. F) Claimant completed the FCE, which was deemed valid and resulted in significant physical restrictions. (Ex. F, p. 2) The valid FCE placed claimant in the light physical demand category "per the Dictionary of Occupational Titles," based on the following restrictions: no lifting more than 20 pounds from floor to waist; 10 to 20 pounds waist to crown; bilateral carry of 15 pounds; left unilateral carry of 10 pounds; and limitations on left hand grasping and pinching. (Ex. F, p. 2) Dr. Rodgers agreed with those restrictions. (Tr. p. 27) Defendant-employer arranged for an in-house physician to examine claimant each time after she saw Dr. Quenzer or Dr. Rodgers. The in-house physician, Todd Troll, M.D. also assigned the FCE restrictions as permanent restrictions. (Ex. 5, p. 1; Tr. p. 27)

Dr. Rodgers determined claimant achieved maximum medical improvement on September 24, 2013, for the left upper extremity injury. (Ex. C, p. 62)

Defendant-employer notified claimant in September 2013 that based on the permanent restrictions, they had no work available for claimant. (Tr. p. 28)

I affirm the deputy commissioner's finding that claimant's restrictions will prevent her from returning to most of her past jobs in manufacturing and nursing and that her depression and anxiety will have an impact on her employability to a lesser degree.

I affirm the finding of the deputy commissioner that the opinion of Carma Mitchell, claimant's vocational expert, would have been more persuasive if claimant had made an attempt to return to work.

I affirm the finding of the deputy commissioner that claimant has not met her burden of proof that she is permanently and totally disabled, noting again claimant's failure to attempt to return to work. The deputy commissioner noted claimant presented at hearing as an intelligent, well-spoken and professional individual. I affirm the deputy commissioner's finding that claimant failed to establish she is an odd-lot worker. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995).

I affirm the deputy commissioner's finding that claimant sustained 50 percent industrial disability, which entitles claimant to receive 250 weeks of permanent partial disability benefits.

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 December 12, 2017, is affirmed in its entirety with my additional analysis set forth above.

Defendants employer and insurer shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the stipulated weekly rate of four hundred twenty-eight and 21/100 dollars ($428.21), commencing on September 24, 2013.

Defendants employer and insurer shall receive a credit of seventeen and one half (17 ½) weeks of benefits as stipulated by the parties.

Claimant shall take nothing from the Second Injury Fund of Iowa.

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).

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding, and defendants employer and insurer shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 17th day of May, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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