

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAIDE BOTELLO-DESILVA,

Claimant,

vs.

IAC IOWA CITY LLC,

Employer,

and

AMERICAN ZURICH INS. CO.,

Insurance Carrier,
Defendants.

FILED

MAY 7 2018

WORKERS' COMPENSATION

File No. 5047339

REMAND

DECISION

This case returns to the agency on remand from the Iowa District Court for Polk County. The current issue before the agency concerns the expert opinion of Cory G. Christiansen, M.D., claimant's treating physician.

The case was originally tried to this agency in September 2015. A deputy workers' compensation commissioner issued an arbitration decision on December 18, 2015. An intra-agency appeal ensued and the undersigned issued an appeal decision on July 27, 2017. Claimant sought judicial review of the decision. The Iowa District Court for Polk County entered a Ruling on Petition for Judicial Review on January 16, 2018. In its judicial review decision, the court concluded:

... The Arbitration and Appeal Decisions in this case do not reflect that the agency weighed or made any credibility findings of Dr. Christiansen's expert opinion at all. Ignoring relevant and important evidence is an abuse of discretion. *Meyer v. IBP, INC.*, 710 N.W.2d 213, 219 (Iowa 2006). The court must return this matter to the agency to consider *all* of the evidence in accordance with the law.

IT IS THEREFORE ORDERED that the Decision of the Iowa Workers' Compensation Commissioner is reversed and this matter is REMANDED back to the agency to be decided in conformity with this ruling and *Poula v. Siouxland Wall & Ceiling*, 516 N.W.2d 910 (Iowa Ct. App. 1994).

(January 16, 2018 Ruling on Petition for Judicial Review, pp. 2-3)

This agency's discretion is limited to the purposes of the remand order from the Iowa District Court. Pursuant to the Remand Decision, the sole purpose for the remand

is to demonstrate that the agency weighed or made credibility findings of Dr. Christiansen's expert opinion regarding whether Petitioner carried "her burden to prove any permanent injury beyond her right lower extremity." Arbitration Decision, p. 12. The Deputy nor the commissioner made any findings either accepting or rejecting the opinion of this treating doctor." (Id. pp. 1-2)

The opinion of Dr. Christiansen is noted on page five of the underlying arbitration decision. The decision states:

On October 22, 2012, Dr. Christiansen wrote a letter to Primacor Rehabilitation. Dr. Christiansen opined that the femoral condyle lesion was the result of her injury on February 14, 2011. He did not feel that Saide had returned to baseline. He referred her to Dr. Dery, a pain specialist. Dr. Christiansen also stated, "I do believe that her right hip pin [*sic*] is related to her initial injury based on my initial consultation on April 28, 2011. She complained of right-sided buttock pain that radiated down the posterolateral aspect of her thigh to her knee. I diagnosed her with right hip abductor weakness at that time." (Ex. 1)

Although Dr. Christiansen causally connected the claimant's hip pain to the original injury, the doctor did not provide an opinion as to whether there was permanent injury to the hip or any permanent injury beyond the right lower extremity. Further, I find Dr. Christiansen's opinion is not persuasive because he fails to provide any rationale for why he believes there is a causal connection between claimant's hip pain and the initial injury. The record is void of any evidence from Dr. Christiansen that claimant sustained any permanent injury to her hip. I find Dr. Christiansen's opinions do not support claimant's contention that she sustained permanent injury beyond her right lower extremity. Therefore, I conclude claimant has failed to carry her burden of proof to show by a preponderance of the evidence that she sustained any permanent injury beyond her right lower extremity.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the rate of four hundred ninety-six and 56/100 dollars (\$496.56).

Defendants shall pay claimant four point four (4.4) weeks of permanent partial disability benefits commencing on October 9, 2014.

Defendants shall be entitled to a credit for all weekly benefits paid to date.

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

Defendants shall pay penalty benefits in the amount of two thousand five hundred and no/100 dollars (\$2,500.00).

Pursuant to Iowa Code section 85.27, defendants shall pay the past medical benefits set out in the highlighted portions of Exhibit 30.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding totaling two hundred thirty-one and 91/100 dollars (\$231.91), and claimant shall pay 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 7th day of May, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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