

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MERLYN BROWN, JR.,

Claimant,

vs.

NAYLOR SEED CO.,

Employer,

and

FARM BUREAU PROPERTY &  
CASUALTY INSURANCE COMPANY,Insurance Carrier,  
Defendants.

File No. 5067998

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 1402.40;  
1402.60; 1403.10; 1802.  
1803; 2501; 2502; 2701;  
2907; 4000.2; 5-9998

Defendants Naylor Seed Co, employer, and its insurer, Farm Bureau Property & Casualty Insurance Company, appeal from an arbitration decision filed on November 23, 2021. Claimant Merlyn Brown, Jr. responds to the appeal. The case was heard on February 10, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 15, 2021.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish that the stipulated work injury which occurred on October 26, 2018, caused claimant to sustain a permanent material aggravation of his pre-existing low back condition. The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(v), claimant sustained functional impairment of 22 percent of the body as a whole, which entitles claimant to receive 110 weeks of permanent partial disability (PPD) benefits commencing on December 12, 2019. The deputy commissioner found claimant is entitled to receive healing period benefits from June 11, 2019, through August 11, 2019. The deputy commissioner found claimant is entitled to payment by defendants of the requested past medical expenses itemized in claimant's Exhibit 2. The deputy commissioner found claimant is entitled to ongoing medical care selected by defendants for the work injury, but the deputy commissioner found claimant failed to carry his burden of proof to establish he is entitled to alternate medical care for the injury. The deputy commissioner found claimant failed to prove he is entitled to receive penalty benefits for an unreasonable denial of this claim by defendants. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in the amount of \$3,175.50 for the cost of the independent medical evaluation (IME) of claimant performed by Mark Taylor, M.D. The

deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$487.90.

On appeal, defendants assert the deputy commissioner erred in finding claimant sustained permanent disability as a result of the work injury and in finding claimant is entitled to receive permanent disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants of the requested past medical expenses. Defendants assert the deputy commissioner erred in finding claimant is entitled to ongoing medical care. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive reimbursement from defendants for Dr. Taylor's IME. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and 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 November 23, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant proved the work injury caused a permanent material aggravation of claimant's pre-existing low back condition. I affirm the deputy commissioner's finding that claimant sustained functional impairment of 22 percent of the body as a whole as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from June 11, 2019, through August 11, 2019. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to ongoing medical care selected by defendants for the work injury, and I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to alternate medical care for the injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for Dr Taylor's IME. I affirm the

deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$487.90.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 23, 2021, is affirmed in its entirety.

All weekly benefits shall be paid at the weekly rate of four hundred eighty-nine and 57/100 (\$489.57).

Defendants shall pay claimant healing period benefits from June 11, 2019, through August 11, 2019.

Defendants shall pay claimant one hundred ten (110) weeks of permanent partial disability benefits commencing on December 12, 2019.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants shall satisfy the medical expenses itemized in claimant's Exhibit 2 which are outstanding, which have been paid by a provider/insurer on claimant's behalf, or which have been paid by claimant out-of-pocket. Defendants shall reimburse claimant directly only for payments he made out-of-pocket in addition to the mileage in the amount of one thousand three hundred sixty-seven and 79/100 dollars (\$1,367.79). Defendants shall reimburse/pay any remaining amounts owed to a provider/insurer directly to the applicable provider/insurer.

Pursuant to Iowa Code Section 85.39, Defendants shall reimburse claimant in the amount of three thousand one hundred seventy-five and 50/100 (\$3,175.50) for the cost of Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of four hundred eighty-seven and 90/100 dollars (\$487.90), and defendants 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 on this 29<sup>th</sup> day of April, 2022.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

James Russell (via WCES)