

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROMY R. SCHMITZ,

Claimant,

vs.

BLACK HAWK COUNTY, IN THE
ALTERNATIVE, BLACK HAWK
COUNTY CONSERVATION BOARD
OR HARTMAN RESERVATION
NATURE CENTER,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.

File No. 5060470

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1403.30; 2206;
2501; 2502; 2907; 5-9998

Defendants Black Hawk County, in the alternative, Black Hawk County Conservation Board or Hartman Reservation Nature Center, employer, and its insurer, IMWCA, appeal from an arbitration decision filed on October 24, 2019. Claimant Romy R. Schmitz responds to the appeal. The case was heard on May 7, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 10, 2019.

The deputy commissioner found claimant to be a generally credible witness. The deputy commissioner found claimant sustained a cumulative injury to her left leg that arose out of and in the course of her employment with defendant-employer. The deputy commissioner found claimant's injury manifested on December 8, 2015, but the deputy commissioner found claimant did not discover the injury was serious enough to have an adverse impact on her employment or employability until sometime after December 13, 2015. As such, relying on the discovery rule, the deputy commissioner found claimant's claim is not time-barred by the statute of limitations contained in Iowa Code section 85.26. The deputy commissioner found the total knee replacement recommended by John Hoffman, M.D., is reasonable, necessary, and causally related to the treatment of claimant's condition. The deputy commissioner found claimant is entitled to reimbursement for medical expenses incurred with Covenant Medical Center, Millennium Rehab, CVMS, CVMS PT, and Orthopedic Specialists. The deputy

commissioner found claimant is entitled to receive reimbursement from defendants for the independent medical examination (IME) performed by Farid Manshadi, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

On appeal, defendants assert claimant is not a credible witness. Defendants also assert the deputy commissioner erred in his application of the discovery rule and in finding claimant's claim is not barred by the statute of limitations. In the alternative, defendants argue claimant is not entitled to receive any additional benefits beyond those previously paid.

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

Those portions of the proposed agency 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 October 24, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned 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.

I affirm the deputy commissioner's finding that claimant sustained a cumulative injury to her left leg that arose out of and in the course of her employment. I affirm the deputy commissioner's finding that the work injury manifested on December 8, 2015, and I affirm the deputy commissioner's finding that claimant did not discover it for purposes of the discovery rule until sometime after December 13, 2015. As a result, I affirm the deputy commissioner's finding that claimant's petition is not barred by operation of Iowa Code section 85.26. I affirm the deputy commissioner's finding that the total knee replacement recommended by John Hoffman, M.D., is reasonable, necessary, and causally related to the treatment of claimant's work injury. I therefore affirm the deputy commissioner's order that defendants must provide such care. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement for medical expenses incurred with Covenant Medical Center, Millennium Rehab, CVMS, CVMS PT, and Orthopedic Specialists. I affirm the deputy commissioner's finding that defendants are responsible for reimbursement of Dr. Manshadi's IME and for claimant's costs of the arbitration proceeding in the amount of \$100.00.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. Defendants assert the deputy commissioner erred in finding claimant was credible. I find the deputy commissioner correctly assessed claimant's credibility. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 24, 2019, is affirmed in its entirety.

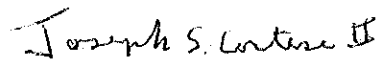
Defendants shall provide future medical care deemed necessary by Dr. Hoffman, to treat the left knee injury of December 8, 2015, including any appliances, medications and referrals for further testing, imaging, therapy and other treatment by other providers. This medical care shall include, but is not limited to, a total knee replacement.

Defendants shall reimburse claimant for the cost of Farid Manshadi, M.D.'s IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay the costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00), 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 16th day of July, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

John Rausch (via WCES)

Jane Lorentzen (via WCES)