

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SUSAN HERMANN,

Claimant,

vs.

CUMULUS MEDIA,

Employer,

and

ZURICH AMERICAN INSURANCE,

Insurance Carrier,
Defendants.

File No. 5060452

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1402.40; 2501
5-9998

FILED
JUL 17 2019
WORKERS' COMPENSATION

Defendants Cumulus Media, employer, and its insurer, Zurich American Insurance, appeal from an arbitration decision filed on March 21, 2019. Claimant Susan Hermann responds to the appeal. The case was heard on November 27, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 11, 2018.

The deputy commissioner found claimant carried her burden of proof that she sustained a permanent material aggravation of an underlying left hip condition, in addition to a stipulated right shoulder injury, as a result of a stipulated injury that arose out of and in the course of claimant's employment with defendant-employer on January 15, 2016. The deputy commissioner found claimant was credible. The deputy commissioner found claimant was not at maximum medical improvement (MMI) for her left hip condition at the time of the arbitration hearing, so the deputy commissioner found the issue of permanent disability for the work injury was not ripe for determination. The deputy commissioner found claimant is entitled to payment by defendants for all of the past requested medical expenses itemized in Exhibit 3, except for the charge in the amount of \$88.00, for date of service of May 9, 2018, from Iowa Diagnostic Imaging Lakeview. The deputy commissioner found that pursuant to Iowa Code Section 85.39, claimant is entitled to reimbursement from defendants in the amount of \$2,589.99, which is two-thirds of the charge in the amount of \$3,883.00 from Sunil Bansal, M.D., for his independent medical evaluation (IME) of claimant performed on August 28, 2018. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant was credible. Defendants assert the deputy commissioner erred in finding claimant sustained a permanent material aggravation of her underlying left hip condition

as a result of the January 15, 2016, work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for any of the past requested medical expenses itemized in Exhibit 3.

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 March 21, 2019, 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 sustained a permanent material aggravation of her underlying left hip condition as a result of the January 15, 2016, work injury. I affirm the deputy commissioner's finding that claimant was not at MMI for her left hip injury at the time of the arbitration hearing, and I affirm the deputy commissioner's finding that the issue of permanent disability for the work injury was not ripe for determination. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for all of the past requested medical expenses itemized in Exhibit 3, except for the \$88.00 charge from Iowa Diagnostic Imaging Lakeview. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in the amount of \$2,589.99 for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

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

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 March 21, 2019, is affirmed in its entirety.

Defendants shall reimburse claimant for her out-of-pocket medical expenses set forth in Exhibit 3, the Medical Bill Summary, with the exception of the bill from Iowa Diagnostic Imaging Lakeview in the amount of eighty-eight and no/100 dollars (\$88.00), for date of service of May 9, 2018.

Defendants shall authorize and pay for ongoing medical treatment for claimant's work-related left hip condition.

Pursuant to Iowa Code section 85.39, defendants shall pay/reimburse claimant in the amount of two thousand five hundred eighty-nine and 99/100 dollars (\$2,589.99) for the cost of Dr. Bansal's IME.

Defendants shall pay claimant's 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 17th day of July, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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