

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERRY ACKERMAN,

Claimant,

vs.

MEDIACOM, LLC,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

FILED

NOV - 1 2017

File No. 5047160 WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

: Head Note Nos: 1803, 1808, 3200, 5-9998

Claimant Jerry Ackerman appeals from an arbitration decision filed on April 8, 2016. Defendants Mediacom, LLC, employer, and its insurer, Travelers Indemnity Co. of CT, and Defendant Second Injury Fund of Iowa (the Fund), respond to the appeal. The case was heard on June 16, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 3, 2016.

The deputy commissioner found claimant sustained functional impairment of ten percent of the body as a whole pursuant to Iowa Code section 85.34(2)(s) as the result of bilateral upper extremity injuries which arose out of and in the course of claimant's employment with defendant-employer on June 22, 2011. The deputy commissioner found claimant failed to carry his burden of proof that the work injury caused permanent total disability. The deputy commissioner found claimant is not entitled to benefits from the Fund because claimant failed to carry his burden of proof that a left ankle injury which occurred on March 23, 2004, is a first qualifying injury under Iowa Code section 85.64 which would entitle claimant to benefits from the Fund. Pursuant to Iowa Code section 85.39, the deputy commissioner found claimant is entitled to reimbursement from defendants in the amount of \$2,330.00 for the cost of the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on November 21, 2014. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$259.44.

Claimant asserts on appeal that the deputy commissioner erred in failing to find the work injury caused claimant to sustain permanent total disability. Claimant asserts the deputy commissioner erred failing to find the left ankle injury which occurred on March 23, 2004, is a first qualifying injury under Iowa Code section 85.64 which would entitle claimant to benefits from the Fund.

Defendants, employer and insurer and the Fund, assert 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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 April 8, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant sustained functional impairment of ten percent of the body as a whole pursuant to Iowa Code section 85.34(2)(s) as the result of the work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that the work injury caused permanent total disability. I affirm the deputy commissioner's finding that claimant is not entitled to benefits from the Fund because claimant failed to carry his burden of proof that the March 23, 2004, left ankle injury is a first qualifying injury under Iowa Code section 85.64 which would entitle claimant to benefits from the Fund. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants employer and insurance carrier in the amount of \$2,330.00 for the cost of Dr. Bansal's IME. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$259.44.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 8, 2016, is affirmed in its entirety.

Defendant-employer and defendant-insurance carrier shall pay claimant fifty (50) weeks of permanent partial disability benefits commencing June 11, 2014, at the weekly rate of five hundred forty-three and 86/100 dollars (\$543.86).

Defendant-employer and defendant-insurance carrier shall receive credit for benefits paid.

Defendant-employer and defendant-insurance carrier shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.


Defendant-employer and defendant-insurance carrier shall reimburse claimant two thousand three hundred thirty and 00/100 dollars (\$2,330.00) for the cost of Dr. Bansal's IME fee.

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

Pursuant to rule 876 IAC 4.33, defendant-employer and defendant-insurance carrier shall pay claimant's costs of the arbitration proceeding in the amount of \$259.44, 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 1st day of November, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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