

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BONNIE BLOCK,

Claimant,

vs.

CLARINDA TREATMENT COMPLEX,
an agency of the STATE OF IOWA,

Self-Insured,
Employer,
Defendant.

FILED

DEC 29 2015

WORKERS' COMPENSATION

File No. 5046672

A P P E A L

D E C I S I O N

Defendant Clarinda Treatment Complex, an agency of the State of Iowa, appeals from an arbitration decision filed on November 6, 2014. The case was heard on October 15, 2014, and it was considered fully submitted on October 22, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner found that claimant sustained bilateral upper extremity injuries on June 6, 2012, arising out of and in the course of claimant's employment with defendant. The deputy commissioner awarded claimant scheduled member disability of two percent impairment of the body as a whole pursuant to Iowa Code section 85.34(2)(s), which entitles claimant to ten weeks of permanent partial disability benefits at the stipulated weekly benefit rate of \$775.06. The deputy commissioner also awarded temporary total disability benefits from March 1, 2013, through April 3, 2013. The deputy commissioner also awarded the medical expenses listed in Exhibit 9. The deputy commissioner also awarded costs, including \$2,295.00 for Dr. Bansal's independent medical evaluation (IME) fee, under rule 876 IAC 4.33.

Defendant asserts on appeal that the deputy commissioner erred in determining that claimant's bilateral upper extremity condition was caused by claimant's employment with defendant. Defendant asserts that the deputy commissioner erred in awarding scheduled member permanent partial disability benefits and in awarding temporary total disability benefits. Defendant also asserts that the deputy commissioner erred in awarding the medical expenses listed in Exhibit 9. Defendant also asserts that the deputy commissioner erred in awarding Dr. Bansal's IME fee as a cost under rule 876 IAC 4.33.

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of November 6, 2014, filed in this matter that relate to issues of causation, scheduled member permanent partial disability, temporary total disability, and entitlement to payment of the medical charges listed in Exhibit 9. I reverse the award of Dr. Bansal's IME fee. I provide the following analysis with respect to these issues:

The deputy commissioner provided sufficient analysis of the causation issue, the issue of scheduled member permanent partial disability, the issue of temporary total disability, and the issue of entitlement to payment of the medical charges listed in Exhibit 9, to explain how he arrived at his findings and conclusions regarding those issues. I concur with the deputy commissioner's findings of fact and conclusions of law pertaining to the issues of causation, scheduled member permanent partial disability, temporary total disability, and entitlement to payment of the medical charges listed in Exhibit 9. Therefore, I adopt the deputy commissioner's findings, conclusions and analysis regarding these issues without further comment.

The next issue to determine is whether the deputy commissioner correctly awarded Dr. Bansal's IME fee as a cost pursuant to rule 876 IAC 4.33.

The Iowa Supreme Court recently gave additional guidance on whether the full cost of an IME can be taxed as a cost pursuant to rule 876 IAC 4.33 if that IME does not qualify for reimbursement under Iowa Code section 85.39. DART v. Young, 867 N.W.2d 839 (Iowa 2015). In DART, the Court clarified that rule 876 IAC 4.33 allows only for the taxation of costs "incurred in the hearing." A physician's report becomes a cost incurred in a hearing when it is used as evidence in lieu of the doctor's testimony. The report is separate from the examination. The underlying expense associated with the examination itself does not become a cost of a report needed for a hearing, just as it does not become a cost of the testimony or deposition. The Supreme Court stated, in pertinent part:

We conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report. Further, even if the examination and report were considered to be a single indivisible fee, the commissioner erred in taxing it as a cost under administrative rule 876-4.33 because the section 86.40 discretion to tax costs is expressly limited by Iowa Code section 85.39.

(Id., p. 846-847)

Rule 876-4.33 is designed, per the Supreme Court, to allow for taxation of costs incurred in the hearing itself rather than reimbursement of fees and expenses incurred in an examination. (Id., p. 847) If an injured worker seeks reimbursement for an IME, the provisions established by the legislature, under Iowa Code section 85.39, must be followed. Only the costs associated with preparation of the written report of a claimant's IME can be reimbursed as a cost at hearing under rule 876 IAC 4.33. (Id., pp. 846-847)

Dr. Bansal's IME fee in this case does not qualify for reimbursement under Iowa Code section 85.39 because defendant never obtained a permanent impairment rating from anyone. Because Dr. Bansal's IME did not qualify for reimbursement under Iowa Code section 85.39, the deputy commissioner awarded the full cost of Dr. Bansal's IME fee under Rule 876 IAC 4.33.

Because Dr. Bansal's charge for his IME cannot be reimbursed under Iowa Code section 85.39, pursuant to Dart, the only reimbursable portion of that expense which could potentially be assessed as a cost under rule 876 IAC 4.33 would be the preparation of the written report by Dr. Bansal. However, the billing in this matter shows Dr. Bansal charged \$2,295.00 for the evaluation and for the report. (Exhibit 8, page 12) There is no evidence in the record as to what portion of that total amount is attributable to the evaluation and what portion of the total amount is attributable to the preparation of the report. Given this record, because there is no breakdown of Dr. Bansal's IME bill, claimant has failed to carry her burden of proof as to the cost Dr. Bansal charged for the preparation of the report. Therefore, claimant cannot recover any portion of Dr. Bansal's IME fee under rule 876 IAC 4.33 and the deputy commissioner's award in that regard is reversed.


ORDER

IT IS THEREFORE ORDERED:

1. Defendant shall pay claimant ten (10) weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred seventy-five and 06/100 dollars (\$775.06) from the stipulated date of April 4, 2013.
2. Defendant shall pay claimant healing period benefits from March 1, 2013, through April 3, 2013, at the rate of seven hundred seventy-five and 06/100 dollars (\$775.06) per week.
3. Defendant shall pay the medical expenses listed in Exhibit 9. Defendant shall reimburse claimant for her out-of-pocket medical expenses and shall hold claimant harmless from the remainder of those expenses.
4. Defendant shall pay accrued weekly benefits in a lump sum.

5. Defendant shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.
6. Defendant shall pay the costs of the arbitration action, including reimbursement to claimant for any filing fee paid in this matter pursuant to administrative rule 876 IAC 4.33,
7. The assessment of Dr. Bansal's IME fee in the amount of two thousand two hundred ninety-five and 00/100 dollars (\$2,295.00) is reversed.
8. Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).
9. Each party shall bear their own costs of the appeal.

Signed and filed this 29th day of December, 2015.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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