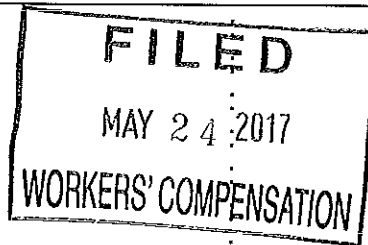


BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN AULWES,
Claimant,

vs.

JOHN DEERE DUBUQUE WORKS,
Employer,
Self-Insured,
Defendant.



File No. 5065781

IOWA CODE SECTION

85.39 DECISION

STATEMENT OF THE CASE

On March 17, 2017, claimant, Brian Aulwes, filed an original notice and petition concerning an independent medical examination pursuant to Iowa Code section 85.39 against John Deere Dubuque Works, defendant employer. No Answer has been filed. An answer is required within 20 days of the receipt of the petition. Rule 876 IAC 4.9(1).

The evidence in this case is the report of Joseph Chen, M.D.

The petition indicates that claimant has waived an evidentiary hearing under Iowa Code section 17A.12.

ISSUE

The issue in this case is whether the claimant is entitled to an independent medical evaluation with Mark Taylor, M.D., pursuant to Iowa Code section 85.39.

FINDINGS OF FACT

The deputy workers' compensation commissioner makes the following findings of fact:

The claimant requested an independent medical evaluation with Dr. Mark Taylor. The examination had been set for March 20, 2017. It is unknown whether the examination took place or was cancelled.

The claimant asserts in his petition that the report attached to the petition by Dr. Chen was obtained by the employer. The claimant further asserts that he believes Dr. Chen's evaluation is too low. Dr. Chen agreed that the claimant sustained a permanent impairment and assigned a 10 percent impairment based on the lumbar spine surgery

and assigned permanent work restrictions, following claimant reaching maximum medical improvement concerning the March 2015 work injury.

The alleged date of injury in this case is March 26, 2015, as set forth in claimant's petition.

CONCLUSIONS OF LAW

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Defendants' liability for claimant's injury must be established before defendants are obligated to reimburse claimant for independent medical examination. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980).

The claimant is seeking an evaluation for the March 26, 2015, work injury. Liability is not in dispute as no answer or resistance to the petition has been made and Dr. Chen notes that the injury in question is the March 2015 work injury. Dr. Chen has given an impairment rating of 10 percent and the claimant believes that this evaluation is too low.

The requirements of Iowa Code section 85.39 have been met.

ORDER

IT IS THEREFORE ORDERED that claimant's petition for an independent medical evaluation pursuant to Iowa Code section 85.39 is hereby granted.

Signed and filed this 24th day of May, 2017.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Mark J. Sullivan
Attorney at Law
PO Box 239
Dubuque IA 52004-0239
sullivan@rkenline.com

Dirk Hamel
Attorney at Law
770 Main St.
Dubuque, IA 52001-6820
dhamel@dbqlaw.com

TJG/kjw