

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 FIKRETA NUSINOVIC,

Claimant,

vs.

UNITYPOINT HEALTH-WATERLOO/
ALLEN HEALTH SYSTEMS, INC.,Employer,
Self-Insured,
Defendant.File Nos. 19001748.01, 20009674.01,
20700556.01, 21700203.01

A P P E A L

D E C I S I O N

Headnotes: 1402.20; 1402.30; 1402.40;
1403.10; 1703; 1803;
1803.1; 2501; 2907; 5-9998

Claimant Fikreta Nusinovic appeals in File Nos. 20009674.01 and 21700203.01 from the arbitration decision filed in those cases on February 24, 2022. Defendant UnityPoint-Waterloo/Allen Health Systems, self-insured employer, responds to the appeal.

Defendant UnityPoint-Waterloo/Allen Health Systems appeals in File Nos. 19001748.01 and 20700556.01 from the arbitration decision filed in those cases on February 24, 2022. Claimant responds to the appeal.

Those four consolidated cases were heard on October 29, 2021, along with File Nos. 21700201.01 and 21700202.01, and the six consolidated cases were considered fully submitted in front of the deputy workers' compensation commissioner on January 7, 2022. File Nos. 21700201.01 and 21700202.01 were not appealed and are not referenced in this appeal decision.

In the arbitration decision, in File No. 20009674.01, alleged injury date of May 30, 2019, the deputy commissioner found claimant failed to prove she sustained a work-related injury to her left shoulder on May 30, 2019, as alleged. The deputy commissioner found all other issues raised in File No. 20009674.01 are moot.

In File No. 21700203.01, alleged injury date of February 10, 2021, the deputy commissioner found claimant failed to prove she sustained a work-related injury to her left shoulder on February 10, 2021, as alleged. The deputy commissioner found all other issues raised in File No. 21700203.01 are moot.

In File No. 19001748.01, stipulated injury date of May 3, 2019, the deputy commissioner found claimant proved she sustained a work-related injury to her right shoulder on May 3, 2019. The deputy commissioner found claimant failed to prove the May 3, 2019, injury extends beyond claimant's right shoulder into her body as a whole.

The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(n), claimant sustained permanent functional impairment of 22 percent of the right shoulder as a result of the May 3, 2019, injury, which entitles claimant to receive 88 weeks of permanent partial disability benefits commencing on the stipulated commencement date of May 18, 2020. The deputy commissioner found defendant is entitled to a credit in the amount of \$45.88 for excess payments of temporary disability benefits, and the deputy commissioner found defendant is entitled to a credit in the amount of \$195.20 for excess payments of permanent disability benefits. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$103.00.

In File No. 20700556.01, stipulated injury date of September 10, 2019, the deputy commissioner found claimant proved she sustained permanent disability of her low back and her right hip as a result of the September 10, 2019, work injury. The deputy commissioner found claimant's permanent functional impairment for the September 10, 2019 injury is 14 percent of the body as a whole. The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(v), claimant is not entitled to receive industrial disability benefits for the September 10, 2019, injury and is limited to the extent of her functional impairment because defendant offered claimant a position in May 2021 for which claimant would receive greater earnings than what she was receiving at the time of the September 10, 2019, work injury, and claimant declined to accept that position. The deputy commissioner found because claimant's functional impairment rating for the September 10, 2019, injury is 14 percent of the body as a whole, claimant is entitled to receive 70 weeks of permanent partial disability benefits commencing on April 12, 2021, for the September 10, 2019, injury. The deputy commissioner found defendant is responsible for the requested past medical charges totaling \$1,112.00 itemized in Exhibit 8. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$103.00.

For both File No. 19001748.01 and File No. 20700556.01, the deputy commissioner ordered defendant to reimburse claimant in the amount of \$992.00 for the cost of the second functional capacity evaluation (FCE) which was used by Dr. Sassman in preparing her IME report.

In File No. 20009674.01, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove she sustained a work-related injury to her left shoulder on May 30, 2019, as alleged. Claimant asserts the deputy commissioner erred in finding all other issues raised in File No. 20009674.01 are moot.

In File No. 20009674.01, defendant asserts on appeal that the arbitration decision should be affirmed in its entirety.

In File No. 21700203.01, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove she sustained a work-related injury to her left shoulder on February 10, 2021, as alleged. Claimant asserts the

deputy commissioner erred in finding all other issues raised in File No. 21700203.01 are moot.

In File No. 21700203.01, defendant asserts on appeal that the arbitration decision should be affirmed in its entirety.

In File No. 19001748.01, Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained 22 percent functional impairment of her right shoulder as a result of the May 3, 2019, work injury. Defendant asserts the award for permanent impairment in File No. 19001748.01 should be reduced to either five percent of the right shoulder or 15 percent of the right shoulder.

In File No. 19001748.01, claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

In File No. 20700556.01, Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained 14 percent functional impairment of her body as a whole as a result of the September 10, 2019, work injury. Defendant asserts the award for permanent impairment in File No. 20700556.01 should be reduced to seven percent of the body as a whole. Defendant asserts the deputy commissioner erred in finding defendant is responsible for the requested past medical charges totaling \$1,112.00 itemized in Exhibit 8.

In File No. 20700556.01, claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration 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 February 24, 2022, 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.

In File No. 20009674.01, I affirm the deputy commissioner's finding that claimant failed to prove she sustained a work-related injury to her left shoulder on May 30, 2019, as alleged. I affirm the deputy commissioner's finding that all other issues raised in File No. 20009674.01 are moot.

In File No. 21700203.01, I affirm the deputy commissioner's finding that claimant failed to prove she sustained a work-related injury to her left shoulder on February 10, 2021, as alleged. I affirm the deputy commissioner's finding that all other issues raised in File No. 21700203.01 are moot.

In File No. 19001748.01, I affirm the deputy commissioner's finding that claimant proved she sustained a work-related injury to her right shoulder on May 3, 2019. I affirm the deputy commissioner's finding that claimant failed to prove the May 3, 2019, injury extends beyond claimant's right shoulder into her body as a whole. I affirm the deputy commissioner's finding that claimant sustained permanent functional impairment of 22 percent of the right shoulder as a result of the May 3, 2019, injury. I affirm the deputy commissioner's finding that defendant is entitled to a credit in the amount of \$45.88 for excess payments of temporary disability benefits, and I affirm the deputy commissioner's finding that defendant is entitled to a credit in the amount of \$195.20 for excess payments of permanent disability benefits. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$103.00.

In File No. 20700556.01, I affirm the deputy commissioner's finding that claimant proved she sustained permanent disability of her low back and her right hip as a result of the September 10, 2019, work injury. I affirm the deputy commissioner's finding that claimant's functional impairment for the September 10, 2019, work injury is 14 percent of the body as a whole. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(2)(v), claimant is not entitled to receive industrial disability benefits for the September 10, 2019, injury and is limited to the extent of her functional impairment because defendant offered claimant a position in May 2021 for which claimant would receive greater earnings than what she was receiving at the time of the September 10, 2019, work injury, and claimant declined to accept that position. I affirm the deputy commissioner's finding that because claimant's functional impairment rating for the September 10, 2019, injury is 14 percent of the body as a whole, claimant is entitled to receive 70 weeks of permanent partial disability benefits for the September 10, 2019, injury. I affirm the deputy commissioner's finding that defendant is responsible for the requested past medical charges totaling \$1,112.00 itemized in Exhibit 8. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$103.00.

For both File No. 19001748.01 and File No. 20700556.01, I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendant in the amount of \$992.00 for the cost of the second FCE.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues in the above-referenced files.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 24, 2022, is affirmed in its entirety.

For File Nos. 20009674.01 and 21700203.01:

Claimant shall take nothing from these proceedings.

For File No. 19001748.01:

Defendant shall pay Claimant 88 weeks of permanent partial disability benefits, at the stipulated weekly rate of four hundred fifty-six and 92/100 dollars (\$456.92), commencing on May 18, 2020.

Defendant shall receive credit in the amount of two hundred forty-one and 08/100 dollars (\$241.08) for overpaid benefits paid based on an incorrect rate, and defendant shall receive credit for all benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of one hundred three and 00/100 dollars (\$103.00).

For File No. 20700556.01:

Defendant shall pay Claimant 70 weeks of permanent partial disability benefits, at the stipulated weekly rate of four hundred twenty-nine and 52/100 dollars (\$429.52), commencing on April 12, 2021.

Defendant shall receive credit for all benefits paid to date.

Defendant is responsible for the requested past medical charges totaling \$1,112.00 itemized in Exhibit 8.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of one hundred three and 00/100 dollars (\$103.00).

For File Nos. 19001748.01 and 20700556.01:

Defendant shall reimburse claimant nine hundred ninety-two and 00/100 dollars (\$992.00) for the cost of the second FCE

For All Files:

Pursuant to rule 876 IAC 4.33, the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 19th day of July, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Tom Drew (via WCES)

Jennifer Clendenin (via WCES)