

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ASHLEY LORD,

Claimant,

vs.

AMERICAN BAPTIST HOMES OF  
THE MIDWEST,

Employer,

and

ACCIDENT FUND GENERAL  
INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 5064714

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1403.10; 2501;  
2701; 2907; 5-9999

Defendants American Baptist Homes of the Midwest, employer, and its insurer, Accident Fund General Insurance Company, appeal from an arbitration decision filed on July 30, 2020. Claimant Ashley Lord responds to the appeal. The case was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the arbitration hearing on December 3, 2019. No post-hearing briefs were filed.

In the arbitration decision, the deputy commissioner found the stipulated work injury, which occurred on September 8, 2016, resulted in permanent functional impairment of five percent of claimant's right lower extremity, which entitles claimant to receive 11 weeks of permanent partial disability benefits commencing on May 15, 2017. The deputy commissioner found claimant is entitled to receive alternate medical care consisting of an orthopedic evaluation for claimant's ongoing right knee complaints. No further specifications were provided in the arbitration decision. Lastly, the deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

On appeal, defendants assert the deputy commissioner erred in finding claimant proved the stipulated work injury resulted in five percent functional impairment of the right lower extremity. In this regard, defendants assert the deputy commissioner should have accepted the two percent impairment rating issued by Bradley Scott, D.O., and Brian Crites, M.D. Defendants further assert the deputy commissioner erred in finding

claimant's current right knee symptoms and need for any additional treatment are causally related to the work injury.

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 performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on July 30, 2020, 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.

Without additional analysis, I affirm the deputy commissioner's finding that the stipulated work injury resulted in permanent functional impairment of five percent of claimant's right lower extremity.

With additional analysis, I affirm the deputy commissioner's finding that claimant proved her current right knee complaints and her need for additional medical treatment are causally related to the work injury:

The parties in this matter stipulated that claimant sustained a work-related right knee injury on September 8, 2016. The parties further stipulated that the work injury caused temporary and permanent disability. However, there is a dispute as to whether claimant's current knee symptoms and her request for ongoing treatment are causally related to the work injury.

At hearing, claimant sought an award of alternate medical care. Specifically, claimant sought an order directing defendants to authorize ongoing medical care through defendants' authorized treating surgeon, Dr. Scott, or one of the many physicians recommended in Dr. Taylor's IME report. Defendants contend that no current or future medical care is causally related to the work injury and they resist the award of alternate medical care. Ultimately, the deputy commissioner found claimant proved entitlement to alternate medical care.

On appeal, defendants assert the deputy commissioner failed to address whether claimant's current right knee condition and her request for ongoing treatment are causally related to the work injury. While it is true the deputy commissioner did not provide an overly in-depth discussion on the issue, it cannot be said the deputy commissioner failed to address the issue entirely.

In discussing the expert medical opinions contained in the evidentiary record, the deputy commissioner stated, "Dr. Crites' conclusion that none of her ongoing symptoms are related to her stipulated work injury, merely because she did not follow up with the treating surgeon, is not believable." (Arbitration Decision, page 5) Additionally, the deputy commissioner expressly adopted the opinions of Dr. Taylor over the opinions of Dr. Crites when analyzing claimant's request for alternate medical care. (Arb. Dec., p. 5) The deputy commissioner stated, "I find that a refusal to offer claimant further care based upon the opinion of Dr. Crites is unreasonable. For the reasons set forth above, his opinion is rejected." (Arb. Dec., p. 6)

Like the deputy commissioner, I do not find Dr. Crites' opinions to be persuasive in this matter. Dr. Crites' opinions are stated in a cursory manner without sufficient explanation or justification for their basis. It does not appear Dr. Crites had a firm understanding of claimant's complaints, or when they began. Unlike with Dr. Taylor's IME report, Dr. Crites' report provides no meaningful discussion as to claimant's condition following the January 23, 2017, surgery with Dr. Scott. Presumably, Dr. Crites had the opportunity to interview claimant as part of the IME process. If Dr. Crites conducted an interview of claimant, it is not readily apparent in his ultimate conclusion. There is no evidence Dr. Crites was aware of claimant's assertion that her right knee has been symptomatic since January 2017. There is also no evidence Dr. Crites was aware of claimant's unsuccessful attempts to obtain additional medical treatment dating back to August 2017. Rather, Dr. Crites' opinion appears to be based solely on a review of the medical records. I do not find Dr. Crites' conclusory opinion to be convincing or entitled to significant weight.

Claimant credibly testified that she has consistently experienced symptoms in her right knee since undergoing surgery in January 2017. (See Hearing Transcript, p. 25) There is evidence claimant reported continued pain at her only post-op appointment with Dr. Scott. (Joint Exhibit 2, pp. 23-24) The symptoms claimant reported to Dr. Taylor are consistent with the symptoms she reported to Drs. Doty and Scott throughout their treatment of the right knee condition. The symptoms reported by claimant appear credible and should be addressed through ongoing medical care. I reach the same findings and conclusions as the presiding deputy with respect to the issue of alternate medical care.

In addition to the deputy commissioner's findings and conclusions on this issue, I find defendants denied liability for claimant's ongoing right knee condition and offered claimant no additional medical care as of the time of hearing. Like the deputy commissioner, I accept the opinions of Dr. Taylor and find claimant's current condition is causally related to the September 8, 2016, work injury. Therefore, defendants owe claimant treatment for her current condition. An award of alternate medical care is appropriate.

In this case, claimant credibly testified she continues to have symptoms in her right knee and desires additional care for that condition. Regardless of whether

defendants were aware of claimant's attempts to obtain additional medical care in 2017, defendants were in possession of the treatment recommendations made by claimant's IME physician in his May 2, 2019, report. Defendants offered no additional medical care between May 2, 2019, and the date of hearing. I find the medical care provided by defendants, or lack thereof, as of the time of hearing was not reasonable or effective in light of Dr. Taylor's recommendations. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997) I therefor affirm the deputy commissioner's finding that claimant has established entitlement to alternate medical care. Defendants shall provide prompt and reasonable medical care for claimant's ongoing condition.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 30, 2020, is affirmed in its entirety.

Defendants shall pay claimant eleven (11) weeks of permanent partial disability benefits commencing on May 15, 2017, payable at the weekly rate of three hundred ninety-four and 69/100 dollars (\$394.69).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall receive credit for all benefits paid to date.

Defendants shall provide alternate medical care by contacting Dr. Scott's office within 21 days of the entry of this appeal decision to coordinate care. If Dr. Scott declines to evaluate claimant, defendants shall identify an alternative orthopedic surgeon to assume care for claimant's right knee condition.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 15<sup>th</sup> day of January, 2021.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Michael O. Carpenter (via WCES)

Andrew Portis (via WCES)