

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM JOSEPH REINSBACH,

Claimant,

vs.

GREAT LAKES COOPERATIVE,

Employer,

and

NATIONWIDE AGRIBUSINESS,

Insurance Carrier,
Defendants.

File No. 5021493

REMAND DECISION

FILED

JUL 12 2016

WORKERS' COMPENSATION

STATEMENT OF THE CASE

This matter is before the Iowa Workers' Compensation Commission on remand from the Iowa Court of Appeals following a decision dated July 9, 2015.

This matter was initially heard on January 18, 2011. A review-reopening decision was filed on February 29, 2012. That decision found claimant proved his condition had deteriorated since the settlement and his ongoing treatment was related to his work injury. The decision also ordered defendants to pay claimant's medical expenses.

The reimbursement of two independent medical examinations (IMEs) by John Kuhnlein, D.O., was identified as an issue in dispute in the hearing report. The issue was not discussed or ruled on in the review-reopening decision.

The review-reopening decision was appealed within the agency. The appeal decision affirmed the review-reopening decision and ordered defendants to pay the costs of the action. This included reimbursement of the expenses of two IMEs from Dr. Kuhnlein as costs under rule 876 IAC 4.33(6).

A petition for judicial review was filed. The District Court upheld the agency's decision to assess the employer the costs of Dr. Kuhnlein's IME reports as a cost under rule 876 IAC 4.33(6).

After the District Court decision was issued, the Iowa Supreme Court ruled, in DART v. Young, 867 N.W.2d 839, 846-847 (2015), that Iowa Code section 85.39 was the only method for claimant to be reimbursed for costs associated with an IME. The court held that only the costs associated with the preparation of the reports of the physician could be a cost that would be reimbursable under rule 876 IAC 4.33(6).

Based upon the decision in Young, the Court of Appeals, in this case, reversed that part of the District Court's judicial review decision that affirmed the agency's assessment of the costs of the IME to the employer. This case was remanded back to the agency so a determination could be made as to what part, if any, of Dr. Kuhnlein's IME reports could be taxed as a cost against the employer under rule 876 IAC 4.33(6).

When this case was remanded back to the agency, claimant moved to submit additional evidence regarding the costs of preparation of the two IME reports from Dr. Kuhnlein. Both parties were allowed to submit up to 15 pages of additional evidence regarding costs associated with the preparation of the IME reports and the reasonableness of any costs.

On April 27, 2016, claimant submitted three letters as additional evidence. Defendants did not submit any additional evidence. Claimant's exhibits were not marked. They were marked by the undersigned, for clarity of the record, as claimant's Exhibit 4, pages 1 through 11.

Upon written delegation of authority by the workers' compensation commissioner under Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa Workers' Compensation Commissioner.

ISSUE

What portion of the IMEs from Dr. Kuhnlein are reimbursable as a cost under rule 876 IAC 4.33(6)?

FINDING OF FACT

The record in this matter indicates the following:

In a February 1, 2011, report Dr. Kuhnlein gave his opinions of claimant's condition following an IME. (Exhibit 2, pages 206-218) Dr. Kuhnlein charged \$2,412.50 for the exam and the report. (Ex. 2, p. 219)

In a December 20, 2011, report, Dr. Kuhnlein gave his opinions of claimant following another IME. (Ex. 2, pp. 319-337) Dr. Kuhnlein charged \$3,057.50 for the exam and the report. (Ex. 2, p. 338)

As noted in the decision from the Iowa Court of Appeals, "There is no question that section 85.39 does not apply in this case." Reinsbach v. Great Lakes Cooperative, No. 14-0467, slip op. at 3, filed July 9, 2015 (Iowa Ct. App.), 869 N.W.2d 196 (Table).

On March 9, 2016 claimant's counsel wrote to Dr. Kuhnlein. The letter asked, in part, how much of the charges for the IMEs were for performing physical exams, and how much were for procuring the reports. (Ex. 4, pp. 1-4)

In an April 19, 2016 letter, claimant's counsel again wrote to Dr. Kuhnlein asking what part of the charges for the IMEs pertained to the preparation of the reports. (Ex. 4, pp. 5-7)

In an April 22, 2016 letter, Dr. Kuhnlein indicated, "We did not track the time to define how these amounts would have been separated out when this examination was performed, and as such I have no way of defining what you ask without speculating." (Ex. 4, p. 8) Dr. Kuhnlein indicated he could not split out costs without speculating. Dr. Kuhnlein repeated, throughout the April 22, 2016 letter, that he was unable to state, without speculation, how much of the charges were related to a physical exam and how much of the charges were related to generating a report. (Ex. 4, pp. 8-11)

CONCLUSION OF LAW

The only issue on remand is whether claimant is due reimbursement, of any kind, for the IMEs performed by Dr. Kuhnlein.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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).

Iowa Code section 85.39 is the sole method for reimbursement of an exam by a physician of the employee's choice. 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. DART v. Young, 867 N.W.2d 839, 846-847 (Iowa 2015).

Dr. Kuhnlein's IME fees do not qualify for reimbursement under Iowa Code section 85.39. The only reimbursable costs that can be potentially assessed would be for the preparation of a written reports by Dr. Kuhnlein.

Dr. Kuhnlein charged \$2,412.50 for the February 1, 2011, report. (Ex. 2, p. 219)
He charged \$3,057.50 for the December 20, 2011, report. (Ex. 2, p. 338)

Dr. Kuhnlein indicated in his response to claimant's counsel that he was unable to state, without speculation, how much of the charges detailed above, were related to the physical exam, and how much of the charges were related to generating the reports. (Ex. 4, pp. 8-11)

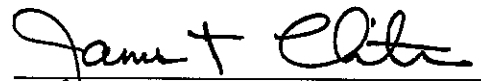
Given this record, claimant has failed to carry his burden of proof as to what costs Dr. Kuhnlein charged for the preparation of the reports for the two IMEs at issue.

As a result, claimant is not due any reimbursement for costs associated with preparation of the February 1, 2011, report, or the December 20, 2011, report.

ORDER

Therefore, it is ordered on remand that after review of the review-reopening exhibits, and the remand exhibits, and the division's prior finding in the review-reopening decision, claimant has failed to carry his burden of proof he is due a reimbursement of any kind for the IME reports from Dr. Kuhnlein.

Signed and filed this 12th day of July, 2016.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
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