

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAWN DRAKE,
Claimant,

vs.

CEDAR RAPIDS COMMUNITY
SCHOOL DISTRICT,

Employer,

and

EMC INSURANCE COMPANIES,

Insurance Carriers,
Defendants.

FILED

APR 10 2019

WORKERS' COMPENSATION

File No. 5051095

REMAND

DECISION

STATEMENT OF THE CASE

This matter is before the Iowa Workers' Compensation Commissioner on remand from the Iowa District Court In and For Polk County, following a decision dated July 12, 2018.

This matter was initially heard on January 7, 2016. An arbitration decision was filed on April 18, 2016. That decision found, in part, claimant was due 425 weeks of permanent partial disability benefits. The decision also found defendants were to pay claimant \$390.00 for the preparation of a vocational report from Kent Jayne, M.A.

The arbitration decision was appealed within the agency. The appeal decision affirmed the arbitration decision.

A petition for judicial review was filed. The district court upheld the agency decision regarding the award of industrial disability. The court remanded the case back to the agency to determine whether claimant is entitled to costs under Rule 876 IAC 4.33 for Mr. Jayne's vocational assessment and report.

ISSUE

Is claimant entitled to costs under Rule 876 IAC 4.33 for Mr. Jayne's vocational assessment and report?

FINDINGS OF FACT

The record concerning this matter indicates that on August 10, 2015, Mr. Jayne provided a vocational assessment and report, as requested by claimant, concerning claimant's employment opportunities. (Exhibit 4)

The billing for that report indicates Mr. Jayne charged claimant \$2,886.00 for the assessment and report at a rate of \$195 per hour. According to billing records, Mr. Jayne charged \$390.00 for writing the report.

CONCLUSIONS OF LAW

Rule 876 IAC 4.33 indicates, in relevant part:

Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes

Only the costs associated with preparation of the written report of a claimant's independent medical exam (IME) can be reimbursed as a cost at hearing under rule 876 IAC 4.33. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 846-847 (Iowa 2015) (DART).

The preparation of a vocational expert report is a cost that can be taxable. Rodriguez-Contreras v. JBS Swift & Company, File No. 5029197 (App. May 8, 2012)

The district court, in the judicial review decision, found this agency erred in concluding it was precluded by law from taxing the full cost of the Jayne assessment and report to defendants, under the DART decision.

The district court held the decision to tax the cost of the vocational assessment and report was within the discretion of this agency. (Judicial Review Dec., page 13) The district court also indicated that while the decision in DART was not legally binding for determining taxation of costs under 876 IAC 4.33, it acknowledged some of the reasoning contained in DART may apply to taxation of costs of a vocational assessment and report (Judicial Review Dec., p. 12)

Based on the district court's remand decision, this agency is not bound by DART in determining costs under 876 IAC 4.33 pertaining to vocational assessments and reports. The district court's decision also noted taxing the cost of a vocational assessment and report is within the discretion of this agency.

The arbitration decision gave little weight to Mr. Jayne's opinions and noted:

The report included many cut and pasted articles on chronic pain, a topic on which Mr. Jayne has no medical training. Those portions of the report are disregarded as are any opinions Mr. Jayne renders that relies on those portions. Mr. Jayne is not a medical doctor, but a vocational specialist. His continued attempts to render medical opinions and conclusions convert him from unbiased expert to advocate, thus making it challenging to afford any of his opinions credibility and weight.

(Arbitration Dec. pages 8-9, 12)

I affirm the findings of fact and conclusions of law in the arbitration decision concerning the weight given to Mr. Jayne's opinions.

This agency has discretion to tax vocational assessments and reports under rule 876 IAC 4.33. Because Mr. Jayne's assessment and report is given little weight in determining claimant's loss of earning capacity, I find claimant is due reimbursement only for the expense associated with preparation of the report.

Billing for Mr. Jayne's assessment and report indicates he charged \$390.00 dollars for writing the report. For this reason, defendants are required to pay claimant \$390.00 for Mr. Jayne's report.

ORDER

THEREFORE it is ordered:

Defendants shall pay claimant three hundred ninety and no/100 dollars (\$390.00) for the cost of Mr. Jayne's report.

Signed and filed this 10th day of April, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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