

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THOMAS HILDRETH (Deceased)  
By JANE HILDRETH, (Surviving Spouse),

Claimant,

vs.

DES MOINES PUBLIC SCHOOLS,

Employer,  
Self-Insured,  
Defendant.

File No. 5062082

A P P E A L  
D E C I S I O N

Head Note Nos: 1805; 2500

**FILED**

APR 10 2019

WORKERS' COMPENSATION

Defendant Des Moines Public Schools, self-insured employer, appeals from an arbitration decision filed on November 1, 2017. Claimant Jane Hildreth, surviving spouse of Thomas Hildreth, cross-appeals. The case was heard on June 21, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the hearing.

The deputy commissioner found Mr. Hildreth's work-related concussion, which occurred on August 26, 2011, was a substantial contributing factor to his stroke and ultimate death. In making this determination, the deputy commissioner found the evidence was most closely aligned with the opinions of claimant's expert, Francis Miller, M.D. The deputy commissioner ordered defendant to pay death benefits to Ms. Hildreth pursuant to Iowa Code section 85.31 and to reimburse Ms. Hildreth for the medical bills attached to the hearing report.

Although the deputy commissioner found a causal relationship between Mr. Hildreth's work-related concussion and his death, the deputy commissioner also noted this was a very close case due to the compelling testimony of defendant's expert, Michael Jacoby, M.D. As such, the deputy commissioner declined to assess costs to either party and instead ordered each party to pay their own costs.

On appeal, defendant asserts Ms. Hildreth failed to carry her burden to prove that the death of Mr. Hildreth was causally related to the August 26, 2011, work injury. Defendant likewise argues Ms. Hildreth failed to prove her entitlement to reimbursement for Mr. Hildreth's medical expenses near the time of his death. Lastly, defendant argues costs should have been assessed to Ms. Hildreth.

On cross-appeal, Ms. Hildreth argues costs should have been assessed to defendant.

Before I address the merits of the appeal, defendant in its reply brief makes a request to omit portions of claimant's appeal brief from consideration due to claimant's violation of Iowa Administrative Code rule 876 4.31, which provides that "[n]o evidence shall be taken after the hearing." More specifically, defendant requests that the first full paragraph and the third paragraph of page 4 and the last paragraph on page 9 through the third paragraph on page 10 of claimant's appeal brief be omitted from my consideration.

The first full paragraph of page 4 of claimant's appeal brief cites a Mayo Clinic article. This article was not included in the exhibits presented at hearing, and claimant makes no assertion that it could not have been discovered and produced at hearing. I therefore conclude it is not appropriate pursuant to rule 876 IAC 4.31 for me to consider the cited article. Thus, the first full paragraph of page 4 of claimant's appeal brief is omitted from my consideration on appeal.

The third paragraph of page 4 of claimant's appeal brief refers to statistics purportedly from the National Institute of Health, but there is no accompanying citation to the record, nor are any of the admitted exhibits from the National Institute of Health. Claimant makes no assertion that these statistics could not have been discovered and produced at hearing. I therefore conclude, pursuant to rule 876 IAC 4.31, that it is not appropriate for me to consider these statistics. Thus, the third paragraph of page 4 of claimants' appeal brief is omitted from my consideration on appeal.

The last paragraph on page 9 through the third paragraph on page 10 of claimant's appeal brief concerns claimant's counsel's contacts with Dr. Jacoby and Dr. Jacoby's professional website. None of the information or assertions contained in these paragraphs were presented at hearing either via testimony or exhibits, and claimant makes no assertion that this information could not have been discovered and produced at hearing. I therefore conclude it is not appropriate pursuant to rule 876 IAC 4.31 for me to consider this information. Thus, pursuant to rule 876 IAC 4.31, the last paragraph on page 9 through the third paragraph of page 10 of claimant's appeal brief are omitted from my consideration on appeal.

Turning to the merits of the appeal, those portions of the proposed agency 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 November 1, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that Mr. Hildreth's age and other comorbidities could have contributed to his stroke without precluding his work-related concussion from being a significant contributing factor. I affirm the deputy commissioner's finding that Mr. Hildreth did not have any documented hypertension or history of blood sugar issues, smoking, or drinking. I affirm the deputy commissioner's finding that the evidence, specifically Mr. Hildreth's medical condition at the time of his stroke and his concussion on August 26, 2011, most closely aligns with the opinions of Dr. Miller and his supporting literature. I affirm the deputy commissioner's finding that Mr. Hildreth's concussion on August 26, 2011, was a substantial contributing factor to his stroke and ultimate death. I therefore affirm the deputy commissioner's order that defendants shall pay Ms. Hildreth death benefits and reimburse Ms. Hildreth for the medical expenses attached to the hearing report. Finally, I affirm the deputy commissioner's decision not to assess costs of the arbitration proceeding to either party.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 1, 2017, is affirmed in its entirety.

Defendant shall pay survivor benefits to dependent Jane Hildreth, at the weekly rate of eight hundred thirty-two and 57/100 dollars (\$832.57) commencing on October 16, 2013, and continuing until such time as benefits under Iowa Code section 85.31 shall be terminated.

Defendant shall receive a credit for all benefits previously paid to Thomas Hildreth.

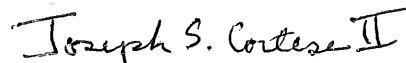
Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable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

Defendant shall pay and/or reimburse the medical expenses attached to the hearing report.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own the costs of the arbitration proceeding and 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 10<sup>th</sup> day of April, 2019.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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