

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LESVIA RIVAS,

Claimant,

vs.

FARMLAND FOODS,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,
Defendants.

File No. 5052859

A M E N D E D

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1801, 1803; 2502;
5-9999

FILED

JUN 28 2019

WORKERS' COMPENSATION

Defendants Farmland Foods, employer, and its insurer, Safety National, appeal from an arbitration decision filed on February 20, 2017. Claimant Lesvia Rivas responds to the appeal. The case was heard on September 6, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 19, 2016.

The deputy commissioner found claimant carried her burden of proof that she sustained permanent injuries to her right upper extremity and her right shoulder which arose out of and in the course of claimant's employment with defendant-employer on July 11, 2014. The deputy commissioner found claimant is entitled to receive healing period benefits from August 1, 2014, through September 24, 2015. The deputy commissioner found claimant sustained 50 percent industrial disability as a result of the work injury, which entitles claimant to receive 250 weeks of permanent partial disability benefits commencing on September 25, 2015. The deputy commissioner found claimant is entitled to receive reimbursement from defendants in the amount of \$2,140.00 pursuant to Iowa Code section 85.39 for the cost of the independent medical evaluation (IME) performed by Robin Sassman, M.D., on May 18, 2015. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained permanent injuries to her right shoulder as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant's permanent disability resulting from the work injury extends beyond claimant's right upper extremity into claimant's right shoulder. Defendants assert the deputy

commissioner erred in finding claimant proved entitlement to receive industrial disability benefits and in finding claimant sustained 50 percent industrial disability. Defendants assert the deputy commissioner erred in awarding claimant healing period benefits from August 1, 2014, through September 24, 2015. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive reimbursement for any IME expense of Dr. Sassman.

While claimant did not file a cross-appeal, she asserts in her appeal brief that she should be awarded substantially more than 50 percent industrial disability, up to permanent total disability.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on February 20, 2017, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained permanent injuries to her right upper extremity and her right shoulder as a result of the July 11, 2014, work injury.

I affirm the deputy commissioner's award of healing period benefits from August 1, 2014, through September 24, 2015.

I affirm the deputy commissioner's award of 50 percent industrial disability, which entitles claimant to receive 250 weeks of PPD benefits commencing on September 24, 2015.

I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I modify the deputy commissioner's order that defendants pay Dr. Sassman's IME charge with the following analysis:

The \$2,140.00 charge which the deputy commissioner ordered defendants to pay was for the IME performed by Dr. Sassman on May 18, 2015. As of May 18, 2015, no permanent impairment rating had been issued by a defense-selected physician. Therefore, pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for Dr. Sassman's \$2,140.00 charge for her May 18, 2015, IME. In her invoice for the May 18, 2015, IME (Exhibit 8, page 96), Dr. Sassman does not itemize how much of her charge was for her examination of claimant and how much of the charge was for the preparation of her report. Because there is no such

itemization, no portion of Dr. Sassman's \$2,140.00 charge for her May 18, 2015, IME can be taxed to defendants as a cost pursuant to rule 876 IAC 4.33.

Dr. Sassman performed a second IME of claimant on August 18, 2016. The total charge for Dr. Sassman's second IME is \$1,215.00, which I find to be a reasonable charge. On August 15, 2016, three days before Dr. Sassman's second IME, defendants had claimant undergo an IME with Wade K. Jensen, M.D., orthopedic surgeon. Dr. Jensen issued Impairment ratings for claimant's right upper extremity and also for claimant's right shoulder. Because there was an evaluation of permanent impairment by a defense-selected physician prior to Dr. Sassman's second IME on August 18, 2016, claimant is entitled to reimbursement from defendants pursuant to Iowa Code section 85.39 for Dr. Sassman's \$1,215.00 charge for her second IME. Such reimbursement shall be ordered.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of February 20, 2017, is MODIFIED as follows:

Defendants shall pay claimant healing period benefits from August 1, 2014, through September 24, 2015, at the weekly rate of four hundred twenty-six and 82/100 dollars (\$426.82).

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing September 25, 2015, at the weekly rate of four hundred twenty six and 82/100 dollars (\$426.82).

Defendants shall receive credit for all benefits paid to date

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 pay/reimburse as appropriate Dr. Sassman's August 18, 2016, IME fee in the amount of one thousand two hundred fifty and 00/100 dollars (\$1,250.00).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's 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), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 28th day of June, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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