

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DELTA DAWN BERTE,	:	
	:	
Claimant,	:	File No. 5065025
	:	
vs.	:	A P P E A L
	:	
SNAP-ON LOGISTICS COMPANY,	:	D E C I S I O N
	:	
Employer,	:	
Self-Insured,	:	Head Note Nos: 1402.40; 1803; 1803.1;
Defendant.	:	2501; 2701; 2907; 4000.2

Claimant Delta Dawn Berte appeals from an arbitration decision filed on May 17, 2018. Defendant Snap-On Logistics Company, self-insured employer, cross-appeals. The case was heard on December 1, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 22, 2018.

The deputy commissioner found claimant sustained a temporary exacerbation of her long-standing pre-existing mental condition as a result of the stipulated October 20, 2016, work-related injury, and the deputy commissioner awarded claimant nothing for that condition.

With respect to claimant's physical injury, the deputy commissioner found the permanent disability is limited to claimant's left second, or long, finger and does not extend beyond the finger into claimant's left hand, or into her left upper extremity, or into her body as a whole. The deputy commissioner accepted the permanent impairment rating of Rene Recinos, M.D., the authorized treating physician who was selected by claimant. Dr. Recinos found claimant sustained scheduled member functional disability of 30 percent of the left second finger, which entitles claimant to receive nine weeks of permanent partial disability (PPD) benefits.

The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$100.00 for an unreasonable underpayment by defendant of PPD benefits.

The deputy commissioner found defendant is obligated to pay for the requested past medical expenses and medical mileage itemized at pages six through eight of the attachment to the hearing report, but not including the charge for the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D., on October 23, 2017.

The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to payment or reimbursement from defendant for the cost of Dr. Bansal's IME.

The deputy commissioner found claimant is not entitled to receive alternate medical care for her alleged phantom limb pain or for her alleged post-traumatic stress disorder (PTSD) because the deputy commissioner found claimant failed to prove those are conditions claimant currently suffers from, and because claimant failed to prove those conditions are causally related to the work injury.

The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$2,423.61, which includes \$2,316.00 for the cost of Dr. Bansal's IME report.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's permanent disability resulting from the work injury is limited to claimant's left second finger, and in finding claimant's permanent disability resulting from the work injury does not extend into claimant's left hand, or into claimant's left upper extremity, or into claimant's body as a whole. Claimant asserts the award of PPD benefits should be increased substantially.

Defendant asserts on cross-appeal that the deputy commissioner erred in finding defendant is obligated to pay for any of the requested past medical expenses and medical mileage itemized at pages six through eight of the attachment to the hearing report. Defendant asserts the deputy commissioner erred in taxing Dr. Bansal's \$2,316.00 charge for his IME report as a cost to be paid by defendant.

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 May 17, 2018, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant sustained only a temporary exacerbation of her long-standing pre-existing mental condition as a result of the October 20, 2016, work injury, and I affirm the deputy commissioner's finding that claimant is entitled to receive nothing for that condition.

I affirm the deputy commissioner's finding that claimant's permanent disability resulting from the work injury is limited to claimant's left second finger and does not extend beyond the finger into claimant's left hand, or into her left upper extremity, or into her body as a whole.

I affirm the deputy commissioner's finding that claimant sustained scheduled member functional disability of 30 percent of the left second finger.

I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$100.00 for an unreasonable underpayment by defendant of PPD benefits.

I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant for the requested past medical expenses and medical mileage itemized at pages six through eight of the attachment to the hearing report, but not including the charge for Dr. Bansal's IME.

I affirm the deputy commissioner's finding that claimant is not entitled to receive alternate medical care for her alleged phantom limb pain or for her alleged PTSD because I affirm the deputy commissioner's finding that claimant failed to prove those are conditions claimant currently suffers from, and because claimant failed to prove those conditions are causally related to the work injury.

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

I respectfully reverse the deputy commissioner's order taxing Dr. Bansal's \$2,316.00 charge for his IME report as a cost to be paid by defendant. I provide the following analysis for my decision in that regard:

The Iowa Supreme court's decision in DART v. Young, 867 N.W.2d 839 (Iowa 2015). holds that only the cost associated with the preparation of a written report of a claimant's IME can be assessed as a cost at hearing under rule 876-4.33. See 867 N.W.2d at 846-847. More specifically, the court in DART held the "underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. at 846. I have previously concluded that expenses for a physician's review of medical records are expenses associated with an examination and therefore cannot be taxed as a cost under rule 876 IAC 4.33(6). See Crosby v. Foodliner, Inc., File No. 5054995 (App. Dec., July 16, 2019) and Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec. 17, 2018).

In this case, Dr. Bansal's bill is broken down between "Physical Examination" in the amount of \$542.00.00 and "Record Review and Report" in the amount of \$2,318.00. (Exhibit 1, p. 29) Claimant failed to establish which portion of the \$2,316.00 was associated with Dr. Bansal's preparation of his report versus his records review. Because claimant did not offer any evidence regarding what was charged solely for preparation of Dr. Bansal's report, I conclude no portion of Dr. Bansal's \$2,856.00 IME charge can be taxed as a cost under rule 876-4.33. See Crosby v. Foodliner, Inc., File No. 5054995 (App. Dec., July 16, 2019); Kirkendall, File No. 5055494 (App. Dec. 17, 2018).

The deputy commissioner's order for defendants to pay claimant \$2,316.00 for Dr. Bansal's IME report is therefore reversed.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 17, 2017, is affirmed in part and is reversed in part.

Defendant shall pay claimant nine (9) weeks of permanent partial disability benefits at the stipulated weekly rate of four hundred forty and 18/100 dollars (\$440.18) beginning on the stipulated commencement date of November 16, 2016.

Defendant shall receive a credit for all benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) 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 (1) year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant shall pay claimant penalty benefits of one hundred and no/100 dollars (\$100.00).

Defendant shall pay, reimburse, and/or otherwise satisfy the requested past medical expenses and medical mileage itemized at pages six, seven and eight of the attachment to the hearing report, but not including the charge for Dr. Bansal's IME

Pursuant to rule 876 IAC 4.33, defendant shall pay claimants costs of the arbitration proceeding in the amount of one hundred seven and 61/100 dollars (\$107.61), and claimant shall pay 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 22nd day of November, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mark S. Soldat Via WCES

Joni Ploeger Via WCES