

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER SHORT,	:	
	:	File No. 5057459
Claimant,	:	
vs.	:	
RIVER BEND INDUSTRIES,	:	A P P E A L
	:	
Employer,	:	D E C I S I O N
and	:	
TRAVELERS,	:	
	:	Head Notes: 1402.40; 1802; 1803; 2501;
Insurance Carrier,	:	2701, 2907; 5-9999
Defendants.	:	

Defendants River Bend Industries, employer, and its insurer, Travelers, appeal from an arbitration decision filed on January 29, 2019. Claimant Jennifer Short cross-appeals. The case was heard on October 8, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 26, 2018.

In the arbitration decision, the deputy commissioner found claimant's ongoing left arm, left shoulder, and neck symptoms are causally related to her December 1, 2013, work injury. The deputy commissioner found claimant required further treatment of her left arm, and specifically that the orthopedic evaluation recommended by Robin Sassman, M.D., was appropriate, reasonable, and necessary. The deputy commissioner found additional evaluation of claimant's neck was reasonable, necessary, and appropriate, and that a return to a spine specialist was reasonable. The deputy commissioner found Dr. Sassman's recommendation for a shoulder surgeon to evaluate claimant's left shoulder was reasonable, necessary, and appropriate. The deputy commissioner determined defendants should retain the right to select the authorized treating physicians.

In light of claimant's need for additional treatment, the deputy commissioner found claimant had not yet achieved maximum medical improvement (MMI). The deputy commissioner found claimant failed to prove her entitlement to healing period benefits from October 27, 2016, through July 17, 2017. However, the deputy commissioner found claimant proved her entitlement to healing period benefits from July

18, 2017, through the date of the hearing and continuing into the future until the first factor outlined in Iowa Code section 85.34(1) occurs.

On appeal, defendants assert the deputy commissioner erred in finding claimant is entitled to a running award of healing period benefits and additional medical care. Defendants assert claimant's industrial disability is ripe for determination and defendants assert claimant is entitled to receive a minimal award for industrial disability.

On cross-appeal, claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive healing period benefits from October 27, 2016, through July 17, 2017.

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 January 29, 2019, 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 claimant's ongoing left arm, left shoulder, and neck symptoms are causally related to the December 1, 2013 work injury. I affirm the deputy commissioner's finding that claimant requires additional medical treatment for her left arm and I find Dr. Sassman's recommendation for an orthopedic evaluation is appropriate, reasonable, and necessary. I affirm the deputy commissioner's finding that additional evaluation of claimant's neck is reasonable, necessary, and appropriate, and I find that a return to a spine specialist is likewise reasonable, necessary, and appropriate. I affirm the deputy commissioner's finding that Dr. Sassman's recommendation for a shoulder surgeon to evaluate claimant's left shoulder is reasonable, necessary, and appropriate. I affirm the deputy commissioner's finding that defendants should retain the right to select the authorized treating physicians.

I affirm the deputy commissioner's finding that claimant had not yet achieved MMI at the time of the hearing. I affirm the deputy commissioner's finding that claimant failed to prove her entitlement to healing period benefits from October 27, 2016, through July 17, 2017. I affirm the deputy commissioner's finding that claimant proved her entitlement to healing period benefits from July 18, 2017, through the date of the hearing and continuing into the future until the first factor outlined in Iowa Code section 85.34(1) occurs.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 29, 2019, is affirmed in its entirety.

Defendants shall pay healing period benefits from July 18, 2017, through the date of the arbitration hearing and into the future until the first factor outlined in Iowa Code section 85.34(1) occurs.

All weekly benefits shall be paid at the stipulated rate of three hundred thirty-nine and 83/100 dollars (\$339.83).

Defendants employer and insurance carrier 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 be entitled to a credit for all weekly benefits paid to date and documented in Defendants' Exhibit D.

The parties shall work together to accurately categorize whether weekly benefits paid to date should be categorized as healing period or permanent disability based upon the findings and conclusions in this decision.

If the parties cannot reach consensus on defendants' credit entitlement, the parties shall file a timely request for rehearing on this issue and the parties should brief their specific disputes and contentions regarding the credit.

Defendants shall authorize further evaluation and treatment with a board certified or board eligible surgeon who specializes in hand and elbow treatment for claimant's carpal tunnel, cubital tunnel, and epicondylitis conditions.

Defendants shall authorize further evaluation and treatment with a board certified or board eligible surgeon who specializes in shoulder treatment for claimant's left shoulder.

Defendants shall authorize further evaluation and treatment with a board certified or board eligible surgeon who specializes in spine surgery for claimant's neck.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of five hundred twenty-five dollars (\$525.00), and defendants shall pay 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 24th day of March, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Nicholas W. Platt Via WCES

Julie Burger Via WCES