

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JULIO VARGAS,

Claimant,

vs.

TYSON FOODS,

Employer,  
Self-Insured,  
Defendant.

File Nos. 5041117, 5041115

A P P E A L

D E C I S I O N

Head Note Nos: 1801, 1803, 2500, 2907

**FILED**

**NOV 17 2016**

**WORKERS' COMPENSATION**

Defendant Tyson Foods, self-insured employer, appeals from an arbitration decision filed on March 10, 2015. Claimant Julio Vargas cross-appeals. The case was heard on July 28, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 2, 2014.

In File No. 5041115, alleged injury date of July 7, 2010, the deputy commissioner found claimant failed to carry his burden of proof that he sustained a cumulative injury which arose out of and in the course of claimant's employment with defendant. Claimant was awarded nothing in File No. 5041115. No arguments are raised by the parties in this appeal with regard to File No. 5041115. Therefore, the deputy commissioner's findings and conclusions regarding File No. 5041115 are affirmed.

In File No. 5041117, stipulated work-related injury date of April 1, 2010, the deputy commissioner awarded claimant healing period benefits from October 12, 2011, through April 8, 2012. The deputy commissioner found claimant is not entitled to additional healing period benefits from April 9, 2012, through July 8, 2012. The deputy commissioner found claimant carried his burden of proof that he sustained permanent injuries to his right chest wall and to his right shoulder, as well as a permanent aggravation of a pre-existing depressive condition. The deputy commissioner found claimant failed to carry his burden of proof that he sustained permanent injuries to his left wrist, his left shoulder and his low back, or that claimant's employment caused a permanent hearing loss or tinnitus. The deputy commissioner awarded claimant 30 percent industrial disability, which entitles claimant to 150 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found defendant is entitled to a credit of 16.286 weeks of benefits at \$427.74 per week, and the deputy commissioner found defendant is entitled to an additional credit for a payment of \$900.69. The deputy commissioner found claimant failed to prove he is entitled to odd-lot permanent total disability benefits. The deputy commissioner awarded payment of requested medical expenses incurred by claimant after November 5, 2010. The deputy commissioner

ordered defendant to pay the cost of future medical care for claimant's chest wall pain, his right shoulder condition, and for his depression. The deputy commissioner awarded reimbursement to claimant in the amount of \$466.95 for medical mileage. The deputy commissioner ordered defendant to pay costs totaling \$352.23 for claimant's filing fee and for two depositions. The deputy commissioner found defendant was not prejudiced by allowing Exhibit 4 and Exhibit 6 to be introduced into evidence at the arbitration hearing.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant's work injury of April 1, 2010, is the cause of claimant's current disability as to his right chest wall, his right shoulder and his depression. Defendant asserts the deputy commissioner erred in awarding healing period benefits, industrial disability benefits, medical benefits and costs. Defendant asserts the deputy commissioner erred by admitting Exhibits 4 and 6 into evidence at the arbitration hearing.

Claimant asserts on appeal that the deputy commissioner's findings as to causation, the award of medical benefits and costs should be affirmed. Claimant asserts on cross-appeal that the deputy commissioner erred in not awarding additional healing period benefits from April 9, 2012, through July 8, 2012, and in awarding only 30 percent industrial disability and in not awarding significantly more industrial disability or, in the alternative, claimant asserts the deputy commissioner erred in failing to award odd-lot permanent total disability benefits.

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, 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 March 10, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a competent and thoughtful analysis of all 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 award of healing period benefits from October 12, 2011, through April 8, 2012. I affirm the deputy commissioner's finding that claimant is not entitled to additional healing period benefits from April 9, 2012, through July 8, 2012. I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained permanent injuries to his right chest wall and to his right shoulder, as well as a permanent aggravation of claimant's pre-existing depressive condition. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained permanent injuries to his left wrist, his left shoulder and his low back, or that claimant's employment caused a permanent hearing loss or tinnitus. I affirm the deputy

commissioner's award of 30 percent industrial disability, which entitles claimant to 150 weeks of PPD benefits. I affirm the deputy commissioner's finding that defendant is entitled to a credit of 16.286 weeks of benefits at \$427.74 per week, and I affirm the deputy commissioner's finding that defendant is entitled to an additional credit for a payment of \$900.69. I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to odd-lot permanent total disability benefits. I affirm the deputy commissioner's award of requested medical expenses incurred by claimant after November 5, 2010. I affirm the deputy commissioner's award of the cost of future medical care for claimant's right chest wall pain, for his right shoulder condition and for his depression. I affirm the deputy commissioner's award of reimbursement in the amount of \$466.95 for medical mileage and I affirm the award for payment of costs totaling \$352.23 for claimant's filing fee and for two depositions. I affirm the deputy commissioner's finding that defendant was not prejudiced by allowing Exhibit 4 and Exhibit 6 to be introduced into evidence at the arbitration hearing. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 10, 2015, is affirmed in its entirety.

For File No. 5041115 – Alleged Date of Injury July 7, 2010:

Claimant takes nothing.

For File No. 5041117 – Stipulated Date of Injury April 1, 2010:

Defendant shall pay claimant healing period benefits from October 12, 2011, through April 8, 2012, at the rate of four hundred twenty-seven and 74/100 dollars (\$427.74) per week.

Defendant shall pay claimant one hundred fifty (150) weeks of permanent partial benefits at the weekly rate of four hundred twenty-seven and 74/100 dollars (\$427.74) per week commencing April 9, 2012.

Defendant is entitled to a credit of sixteen point two eight six (16.286) weeks of benefits at four hundred twenty-seven and 74/100 dollars (\$427.74) per week and defendant is entitled to an additional credit for a payment of nine hundred and 69/100 dollars (\$900.69).

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

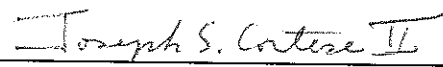
Defendant shall pay requested medical expenses incurred by claimant after November 5, 2010.

Defendant shall reimburse claimant in the amount of \$466.95 for medical mileage.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of \$352.23, and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 17<sup>th</sup> day of November, 2016.



---

JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies To:

John H. Westensee  
Attorney at Law  
1705 2<sup>nd</sup> Ave.  
Rock Island, IL 61201  
[j.westensee@vlaw.com](mailto:j.westensee@vlaw.com)

Jean Z. Dickson  
Attorney at Law  
111 E Third St, Ste. 600  
Davenport, IA 52801-1596  
[jzd@bettylawfirm.com](mailto:jzd@bettylawfirm.com)