

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

YOLANDA PERLA,	:		FILED
	:		MAY 23 2016
Claimant,	:	File No. 5046388	WORKERS' COMPENSATION
vs.	:		
	:		A P P E A L
TYSON FRESH FOODS, INC.,	:		
	:		D E C I S I O N
Employer,	:		
Self-Insured,	:		
Defendant.	:	Head Note No.: 1803	

Defendant Tyson Fresh Foods, Inc., self-insured employer, appeals from an arbitration decision filed on February 23, 2015. Claimant Yolanda Perla responds to the appeal. The case was heard on December 4, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 22, 2014.

The deputy commissioner found claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment on April 12, 2013, which caused a permanent aggravation of claimant's pre-existing rheumatoid arthritis condition and which also caused an injury to claimant's right shoulder. The deputy commissioner awarded claimant running healing period benefits from July 30, 2014.

The deputy commissioner overruled defendant's objection to claimant's Exhibit 1, a report prepared by claimant's counsel with handwriting on it purportedly from Lawrence Rettenmaier, M.D., one of claimant's treating physicians, which addressed the issue of causation. Defendant objected to Exhibit 1 because it was served on November 10, 2014, six days after the discovery deadline of November 4, 2014, which was set out in the hearing assignment order. (Transcript, pp. 4-5) The deputy commissioner offered to keep the record open following the hearing to give defendant the opportunity to rebut the late exhibit. (Tr. pp. 7-8 and 105-106)

The parties stipulated claimant's average weekly wage at the time of the injury was \$562.97, but the parties disputed claimant's marital status and claimant's number of exemptions. The deputy commissioner determined claimant's correct classification is married with three exemptions, which entitles claimant to a weekly benefit rate of \$393.39. The deputy commissioner also awarded claimant disputed prior medical expenses submitted at the hearing. The deputy commissioner also awarded claimant future medical expenses necessitated by the work injury.

Defendant asserts on appeal that the deputy commissioner erred in admitting claimant's Exhibit 1 into evidence. Defendant asserts the deputy commissioner erred in finding claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment on April 12, 2013, which caused a permanent aggravation of claimant's pre-existing rheumatoid arthritis condition and which also caused an injury to claimant's right shoulder. Defendant also asserts the deputy commissioner erred in awarding claimant running healing period benefits from July 30, 2014. Defendant also asserts the deputy commissioner erred in determining claimant's correct classification is married with three exemptions, which entitles claimant to a weekly benefit rate of \$393.39. Defendant also asserts the deputy commissioner erred in awarding claimant disputed prior medical expenses and in also awarding claimant future medical expenses necessitated by the work injury.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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 February 23, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 determination to admit claimant's Exhibit 1 into evidence because the deputy commissioner offered to keep the record open following the hearing to give defendant the opportunity to rebut the late exhibit. I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment on April 12, 2013, which caused a permanent aggravation of claimant's pre-existing rheumatoid arthritis condition and which also caused an injury to claimant's right shoulder. I affirm the deputy commissioner's award of running healing period benefits from July 30, 2014. I affirm the deputy commissioner's finding that claimant's correct classification is married with three exemptions, which entitles claimant to a weekly benefit rate of \$393.39. I affirm the deputy commissioner's award of disputed prior medical expenses and I also affirm the award of claimant's future medical expenses necessitated by the work injury. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of February 23, 2015, is affirmed in its entirety.

Defendant shall pay claimant running healing period benefits from July 30, 2014, at the rate of three hundred ninety-three and 39/100 dollars (\$393.39) per week and continuing until the requirements for termination of healing period benefits are met.

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant shall be given credit for benefits previously paid.

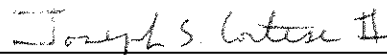
Defendant shall pay claimant's prior medical expenses submitted by claimant at the arbitration hearing.

Defendant shall pay the future medical expenses of claimant necessitated by the work injury.

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

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the arbitration proceeding and defendant shall also pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 23rd day of May, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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