

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA MARTINEZ,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

FILED

File No. 5039651

JUN 19 2018

A P P E A L

WORKERS' COMPENSATION

D E C I S I O N

Head Note Nos: 1803; 2905; 2907

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from a review-reopening decision filed on September 12, 2017. Claimant Maria Martinez responds to the appeal. The case was heard on January 24, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 27, 2017.

The deputy commissioner found claimant is entitled to review-reopening against defendant in this matter because claimant carried her burden of proof that she sustained a physical change of condition following an agreement for settlement which was filed in this matter on July 7, 2014, for injuries which occurred on November 19, 2010, which arose out of and in the course of claimant's employment with defendant. In the agreement for settlement, claimant was awarded 25 percent industrial disability, which entitled claimant to 125 weeks of permanent partial disability (PPD) benefits. Based on the finding of a change of physical condition in the review-reopening decision, the deputy commissioner found claimant's industrial disability has increased to 90 percent, which entitles claimant to receive 450 weeks of permanent partial disability (PPD) benefits, with a credit for all weekly benefits paid pursuant to the agreement for settlement. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendant in the amount of \$2,500.00 for the cost of an independent medical evaluation (IME) performed by Jacqueline Stoken, M.D., on November 9, 2015. The deputy commissioner also ordered defendant to pay claimant's costs of the review-reopening proceeding in the amount of \$113.48.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant's industrial disability increased from 25 percent to 90 percent. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive anything more than a very small increase, if any, in industrial disability. Claimant also asserts the deputy commissioner erred in finding claimant is entitled to receive reimbursement from defendant for the cost of Dr. Stoken's IME.

Claimant asserts on appeal that the review-reopening 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 review-reopening decision filed on September 12, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the review-reopening 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 is entitled to review-reopening against defendant in this matter because I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained a physical change of condition following the July 8, 2014, agreement for settlement. I affirm the deputy commissioner's finding that claimant's industrial disability has increased from 25 percent to 90 percent. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendant for the cost of Dr. Stoken's IME. I affirm the deputy commissioner's order that defendant pay claimant's costs of the review-reopening proceeding in the amount of \$113.48. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on September 12, 2017, is affirmed in its entirety.

Defendant shall pay claimant four hundred fifty (450) weeks of permanent partial disability benefits at the weekly rate of four hundred thirty-five and 34/100 dollars (\$435.34).

Defendant shall receive a credit for all benefits paid pursuant to the agreement for settlement. All additional benefits owed pursuant to this decision shall commence on the stipulated date of December 21, 2015.

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

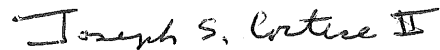
recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant shall reimburse claimant in the amount of two thousand five hundred and 00/100 dollars (\$2,500.00) for the cost of Dr. Stoken's November 9, 2015, IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of \$113.48, and defendant 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 19th day of June, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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