

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD FREESE,

Claimant,

vs.

CEMSTONE CONCRETE MATERIALS,
LLC,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 20006149.02

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1402.60;
1802; 1803; 2501; 2502;
2907; 5-9998

Claimant Richard Freese appeals from an arbitration decision filed on October 5, 2022. Defendants Cemstone Concrete Materials, LLC, employer, and its insurer, Zurich American Insurance Company, respond to the appeal. The case was heard on June 27, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 12, 2022.

In the arbitration decision, the deputy commissioner found claimant did not meet his burden of proof to establish he sustained an injury to his right knee arising out of and in the course of his employment with defendant-employer as alleged. The deputy commissioner found the other issues raised in this matter are moot, and the deputy commissioner ordered the parties to split the cost of the hearing transcript.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained a work-related injury as alleged. Claimant asserts the deputy commissioner erred in finding the other issues raised in this matter are moot, and claimant asserts he is entitled to receive temporary disability benefits and permanent partial disability benefits. Claimant asserts defendants should be responsible for claimant's medical bills set forth in Exhibit 6, and for all future causally connected medical expenses. Claimant asserts defendants should reimburse claimant for the cost of an independent medical examination (IME) under Iowa Code section 85.39, and claimant asserts defendants should reimburse claimant for his costs under 876 Iowa Administrative Code 4.33.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties, and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on October 5, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant was not a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable deference to the findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

I affirm the deputy commissioner's finding that claimant failed to prove he sustained an injury to his right knee arising out of and in the course of his employment with defendant-employer. I affirm the deputy commissioner's finding that the other issues raised in this matter are moot. I affirm the deputy commissioner's order that the parties split the cost of the hearing transcript.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding the above-stated issues.

ORDER

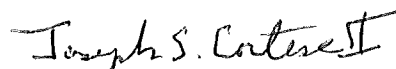
IT IS THEREFORE ORDERED that the arbitration decision filed on October 5, 2022, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to 876 IAC 4.33, the parties shall split the cost of the hearing transcript and claimant shall pay the other costs of the appeal, if any.

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 8th day of February, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mary Hamilton (via WCES)

Patrick Waldron (via WCES)