

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUAN ARROYO,

Claimant,

vs.

SMITHFIELD FOODS, INC.,

Employer,

and

SAFETY NATIONAL CASUALTY
CORP.,Insurance Carrier,
Defendants.

File No. 5066288

A P P E A L

D E C I S I O N

Headnotes: 1402.40; 1803; 1803.1; 2502;
2907; 5-9998

Claimant Juan Arroyo appeals from an arbitration decision filed on February 6, 2020. Defendants Smithfield Foods, Inc., employer, and its insurer, Safety National Casualty Corporation, cross-appeal. The case was heard on October 8, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 4, 2019.

In the arbitration decision, the deputy commissioner was tasked with determining whether, in addition to the accepted right shoulder injury, claimant also sustained compensable injuries to his right upper extremity, his neck, and his left shoulder.

The deputy commissioner found claimant carried his burden of proof to establish he sustained a cumulative injury to his right upper extremity, with a manifestation date of January 11, 2018. The deputy commissioner found claimant failed to prove he sustained cumulative injuries to his neck and/or his body as a whole on or about January 11, 2018.

The deputy commissioner did not definitively find claimant proved he sustained a sequela injury to his left shoulder. However, such a finding can be inferred. The deputy commissioner concluded it is possible claimant experienced some symptoms in his left shoulder; however, because no physician assigned a permanent impairment rating or permanent restrictions as a result of the left shoulder pain, the deputy commissioner concluded claimant failed to prove a permanent injury to his left shoulder.

Similarly, the deputy commissioner found claimant failed to prove he sustained permanent impairment as a result of his right carpal tunnel syndrome.

The deputy commissioner found claimant's right shoulder injury was the only alleged injury that resulted in permanent disability. The deputy commissioner found claimant sustained six percent impairment of the right upper extremity, which entitles claimant to receive 24 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(n).

The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for Dr. Bansal's independent medical examination (IME) fee. However, pursuant to rule 876 IAC 4.33, the deputy commissioner awarded claimant the \$2,206.00 charge from Dr. Bansal for preparation of his IME report. Lastly, the deputy commissioner found claimant is entitled to receive additional costs in the amount of \$113.44, for total costs to be paid by defendants to claimant in the amount of \$2,319.44

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove he sustained a cumulative injury to his neck as a result of the January 11, 2018, work injury. Claimant further asserts that because he sustained permanent injuries to his neck and right shoulder, he is entitled to receive an award of industrial disability benefits.

On cross-appeal, defendants assert the deputy commissioner erred in finding claimant proved he sustained a permanent injury to his right shoulder as a result of the work injury. Similarly, defendants assert the deputy commissioner erred in finding claimant proved his right carpal tunnel syndrome is causally related to the work injury. Lastly, defendants assert the deputy commissioner erred in finding claimant is entitled to an award of costs, including Dr. Bansal's charge for preparation of his IME report.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. 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 February 6, 2020, 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 proved he sustained a cumulative injury to his right upper extremity, with a manifestation date of January 11, 2018.

I affirm the deputy commissioner's finding that claimant failed to prove his right carpal tunnel syndrome has resulted in permanent disability.

I affirm the deputy commissioner's finding that claimant failed to prove he sustained a cumulative injury to his neck and/or the body as a whole as a result of the work injury.

I affirm the deputy commissioner's finding that claimant proved the stipulated right shoulder injury resulted in permanent disability.

I affirm the deputy commissioner's finding that claimant's entitlement to PPD benefits is limited to the scheduled member under Iowa Code section 85.34(2)(n). I affirm the deputy commissioner's finding that claimant sustained six percent impairment of the right upper extremity as a result of his right shoulder injury, which entitles claimant to receive 24 weeks of PPD benefits under Iowa Code section 85.34(2)(n).

I affirm the deputy commissioner's finding that claimant is entitled to receive an award of costs, including Dr. Bansal's charge for preparation of his IME report.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 6, 2020, is affirmed in its entirety.

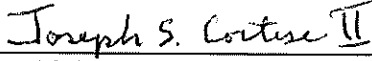
Defendants shall pay claimant twenty-four (24) weeks of permanent partial disability benefits at the stipulated weekly rate of six hundred nineteen and 19/100 dollars (\$619.19), commencing on September 26, 2018.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two thousand three hundred nineteen and 44/100 dollars (\$2,319.44), and the parties shall split 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 23rd day of November, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Byrne (via WCES)

Michael Miller (via WCES)