

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATHY IRWIN,

Claimant,

vs.

CATHOLIC HEALTH INITIATIVES,  
d/b/a MERCY MEDICAL CENTER  
DES MOINES,

Employer,

and

INDEMNITY INSURANCE CO. OF  
NORTH AMERICA,

Insurance Carrier,  
Defendants.

File No. 5052646

A P P E A L

D E C I S I O N

**FILED**

AUG 01 2018

WORKERS' COMPENSATION

Head Note Nos: 1402.30; 1403.30; 2402;  
5-9998

Claimant, Kathy Irwin, appeals from an arbitration decision filed on December 20, 2016. Defendants Catholic Health Initiatives, d/b/a Mercy Medical Center Des Moines, employer, and its insurer, Indemnity Insurance Co. of North America, cross-appeal. The case was heard on August 16, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 6, 2016.

The deputy commissioner found claimant carried her burden of proof that she sustained cumulative injuries to her bilateral knees which arose out of and in the course of her employment with defendant-employer on February 1, 2012, as alleged. The deputy commissioner found under the discovery rule that claimant knew, or reasonably should have known, as of October 8, 2012, of the nature, seriousness and probable compensable character of her bilateral knee condition. The deputy commissioner found that because defendants never paid any weekly benefits for claimant's work injury, claimant was required, pursuant to Iowa Code section 85.26, to file her petition for arbitration in this matter on or before October 8, 2014. The deputy commissioner found that because claimant did not file her petition for arbitration until June 9, 2015, more than eight months after October 8, 2014, claimant's claim for her work-related bilateral knee condition is barred by the two-year statute of limitations contained in Iowa Code section 85.26.

Claimant asserts on appeal that the deputy commissioner erred in finding that under the discovery rule claimant knew, or reasonably should have known, as of

October 8, 2012, of the nature, seriousness and probable compensable character of her bilateral knee condition. Claimant asserts the deputy commissioner erred in finding that pursuant to Iowa Code section 85.26, claimant was required to file her petition for arbitration in this matter on or before October 8, 2014. Claimant asserts the deputy commissioner erred in finding that because claimant did not file her petition for arbitration until June 9, 2015, this matter is barred by the two-year statute of limitations contained in Iowa Code section 85.26. Claimant asserts the deputy commissioner erred in failing to award claimant substantial permanent disability for her bilateral knee condition or, in the alternative, the deputy commissioner erred in failing to award claimant permanent total disability for her condition.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained work-related cumulative injuries to her bilateral knees on February 1, 2012. Defendants assert that the deputy commissioner's finding this matter is barred by the two-year statute of limitations contained in Iowa Code section 85.26 should be affirmed.

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

I have 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.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on December 20, 2016, 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. I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained work-related cumulative injuries to her bilateral knees on February 1, 2012. I affirm the deputy commissioner's finding that under the discovery rule claimant knew, or reasonably should have known, as of October 8, 2012, of the nature, seriousness and probable compensable character of her bilateral knee condition. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.26, claimant was required to file her petition for arbitration in this matter on or before October 8, 2014. I affirm the deputy commissioner's finding that because claimant did not file her petition for arbitration until June 9, 2015, this matter is barred by the two-year statute of limitations contained in Iowa Code section 85.26. I affirm the deputy commissioner's finding that claimant is entitled to take nothing in this matter. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

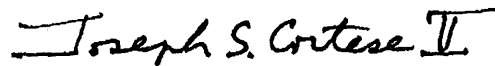
IT IS THEREFORE ORDERED that the arbitration decision filed on December 20, 2016, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, 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 1<sup>st</sup> day of August, 2018.



---

JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies To:

Steve Hamilton  
Attorney at Law  
PO Box 188  
Storm Lake, IA 50588-0188  
[steve@hamiltonlawfirmnpc.com](mailto:steve@hamiltonlawfirmnpc.com)

Kent M. Smith  
Attorney at Law  
1225 Jordan Creek Pkwy., Ste. 108  
West Des Moines, IA 50266-0036  
[ksmith@smithmillslaw.com](mailto:ksmith@smithmillslaw.com)