

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

YOELBYS PIRE-JUSTAFRE,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 1665078.01

A P P E A L

D E C I S I O N

Headnotes: 1402.40; 1801; 1803; 2502;
2907; 5-9998

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from an arbitration decision filed on September 13, 2021. Claimant Yoelbys Pire-Justafre responds to the appeal. The case was heard on May 21, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 1, 2021.

In the arbitration decision, the deputy commissioner found that as a result of the stipulated work injury which occurred on October 1, 2018, claimant sustained 15 percent industrial disability, which entitles claimant to receive 75 weeks of permanent partial disability (PPD) benefits commencing on April 27, 2019. The deputy commissioner found claimant is entitled to receive healing period benefits from November 11, 2018, through January 29, 2019. The deputy commissioner found claimant is entitled to be reimbursed by defendant in the amount of \$1,052.00 for half of the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained 15 percent industrial disability as a result of the work injury. Defendant asserts the award for industrial disability should be reduced to the five percent paid by defendant prior to the arbitration hearing. Defendant asserts the deputy commissioner erred in awarding healing period benefits.

Claimant asserts 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 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 September 13, 2021, 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 sustained 15 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from November 11, 2018, through January 29, 2019. I affirm the deputy commissioner's finding that claimant is entitled to be reimbursed by defendant in the amount of \$1,052.00 for half of the cost of Dr. Bansal's IME.

While I performed a de novo review, I give considerable deference to findings of fact impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. The deputy commissioner found claimant to be a credible witness. Defendant asserts claimant was not credible. I find the deputy commissioner correctly assessed the credibility of claimant. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings. Therefore, I affirm the deputy commissioner's finding that claimant was credible.

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 September 13, 2021, is affirmed in its entirety.

Defendant shall pay Claimant seventy-five (75) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred eleven and 28/100 dollars (\$511.28), commencing on the stipulated commencement date of April 27, 2019.

Defendant shall pay Claimant healing period benefits from November 11, 2018, through January 29, 2019, at the stipulated weekly rate of five hundred eleven and 28/100 dollars (\$511.28).

Defendant shall receive credit for all benefits paid to date.

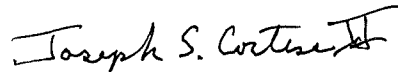
Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant shall reimburse Claimant in the amount of one thousand fifty-two and 00/100 dollars (\$1,052.00) for half the cost of Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, 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 3rd day of March, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mary Hamilton (via WCES)

Jason Wiltfang (via WCES)