

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK PRESSON,

Claimant,

vs.

FREIBURGER CONCRETE & TOPSOIL,
INC.,

Employer,

and

IOWA MUTUAL INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5049542

A P P E A L

D E C I S I O N

: Head Notes: 1100; 1108; 1108.20; 1402.40;
: 1801; 1803; 1804; 2204; 2206;
: 2907; 4000; 4100; 5-9998

Claimant Mark Presson appeals from an arbitration decision filed on March 17, 2021. Defendants Freiburger Concrete & Topsoil, Inc., employer, and its insurer, Iowa Mutual Insurance Company, respond to the appeal. The case was heard on September 26, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 22, 2019.

In the arbitration decision, the deputy commissioner found claimant was not a credible witness. The deputy commissioner found claimant failed to carry his burden of proof to establish he sustained any permanent disability as a result of the stipulated May 19, 2014, work injury. The deputy commissioner found claimant is not entitled to receive any permanent disability benefits for the work injury. The deputy commissioner found claimant reached maximum medical improvement for the work injury on March 9, 2015. The deputy commissioner found claimant is not entitled to receive additional temporary disability benefits from April 23, 2015, through August 24, 2015. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants. The deputy commissioner taxed claimant with the costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant was not a credible witness and in finding claimant failed to prove he sustained any permanent disability as a result of the work injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive permanent total disability benefits for the work injury under either the traditional industrial disability

analysis or under the odd-lot analysis. In the alternative, Claimant asserts he should be awarded industrial disability of at least 60 percent. The deputy commissioner found claimant reached maximum medical improvement for the work injury on March 9, 2015. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive additional temporary disability benefits from April 23, 2015, through August 24, 2015. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits. Claimant asserts the deputy commissioner erred in taxing claimant with the costs of the arbitration proceeding.

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 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 March 17, 2021, which relate to the issues properly raised on intra-agency appeal.

I affirm the deputy commissioner's finding that claimant failed to prove he sustained any permanent disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive any permanent disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant reached maximum medical improvement for the work injury on March 9, 2015, and I affirm the deputy commissioner's finding that claimant is not entitled to receive additional temporary disability benefits from April 23, 2015, through August 24, 2015. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits. I affirm the deputy commissioner's order taxing claimant with the costs of the arbitration proceeding.

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

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 17, 2021, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Defendants shall receive credit for all benefits paid.

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the arbitration proceeding, and claimant shall pay 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 2nd day of September, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jerry Soper (via WCES)

Peter Thill (via WCES)

Edward Rose (via WCES)