

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KAY REH,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5064617

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 1402.50; 1403.30;
1802; 1803; 2209; 2401;
2402; 2501; 2800; 2907;
5-9998

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from an arbitration decision filed on December 13, 2019, and from a ruling on request for rehearing filed on January 8, 2020. Claimant Kay Reh responds to the appeal. The case was heard on August 29, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 17, 2019.

The deputy commissioner found claimant satisfied his burden of proof to establish he sustained a cumulative injury to his low back with an injury date of June 3, 2016, which arose out of and in the course of his employment with defendant. The deputy commissioner found defendant failed to prove its Iowa Code section 85.23 90-day notice defense because the deputy commissioner found defendant had actual notice of claimant's injury within 90 days of June 3, 2016. The deputy commissioner applied the discovery rule to find that the earliest realistic date claimant knew, or should have known, the work injury would have a permanent adverse impact on his employability and was compensable was December 6, 2016. The deputy commissioner found defendant failed to prove its Iowa Code section 85.26(1) two-year statute of limitations defense because claimant filed his original notice and petition on August 8, 2018, which is less than two years after December 6, 2016.

The deputy commissioner found claimant is entitled to receive healing period benefits from May 23, 2018, through June 19, 2018, for the work injury. The deputy commissioner found claimant sustained ten percent industrial disability as a result of the work injury, which entitles claimant to receive 50 weeks of permanent partial disability benefits commencing on June 20, 2018. The deputy commissioner found claimant is entitled to payment by defendant for the requested past medical expenses itemized in the medical expense summary attached to the hearing report.

Defendant asserts on appeal that the deputy commissioner erred in finding that under the discovery rule the earliest realistic date claimant knew, or should have known, the work injury would have a permanent adverse impact on his employability and was compensable was December 6, 2016. Defendant asserts it should be found on appeal that claimant knew, or should have known, the work injury would have a permanent adverse impact on his employability and was compensable was June 3, 2016, and defendant asserts it should then be found this claim is barred by the Iowa Code section 85.26(1) two-year statute of limitations defense because claimant filed his original notice and petition on August 8, 2018, which is more than two years after June 3, 2016. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive temporary disability benefits, permanent disability benefits and medical benefits.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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 13, 2019, and the ruling on request for rehearing filed on January 8, 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 satisfied his burden of proof to establish he sustained a cumulative work-related injury to his low back with an injury date of June 3, 2016. I affirm the deputy commissioner's finding that defendant failed to prove its Iowa Code section 85.23 90-day notice defense because I affirm the deputy commissioner's finding that defendant had actual notice of claimant's injury within 90 days of June 3, 2016. I affirm the deputy commissioner's application of the discovery rule to find that the earliest realistic date claimant knew, or should have known, the work injury would have a permanent adverse impact on his employability and was compensable was December 6, 2016. I affirm the deputy commissioner's finding that defendant failed to prove its Iowa Code section 85.26(1) two-year statute of limitations defense because claimant filed his original notice and petition on August 8, 2018, which is less than two years after December 6, 2016.

I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from May 23, 2018, through June 19, 2018, for the work injury. I affirm the deputy commissioner's finding that claimant sustained ten percent industrial disability as a result of the work injury, which entitles claimant to receive 50 weeks of permanent partial disability benefits commencing on June 20, 2018. I affirm the deputy

commissioner's finding that claimant is entitled to payment by defendant for the requested past medical expenses itemized in the medical expense summary attached to the hearing report.

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 13, 2019, and the ruling on request for rehearing filed on January 8, 2020, are affirmed in their entirety.

Defendant shall pay claimant healing period benefits from May 23, 2018, through June 19, 2018.

Defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits commencing on June 20, 2018.

All weekly benefits shall be paid at the stipulated weekly rate of four hundred seventy-six and 42/100 dollars (\$476.42).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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).

Defendant shall pay all outstanding medical expenses directly to medical providers, reimburse any third-party payer for past medical expenses awarded, reimburse claimant for any out-of-pocket payments made by claimant, and shall hold claimant harmless for all past medical expenses summarized in the attachment to the hearing report.

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 19th day of August, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

John S. Pieters (via WCES)

Jason Wiltfang (via WCES)