

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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GARY HAWKINS,	:	
	:	
Claimant,	:	File No. 5056212
	:	
vs.	:	A P P E A L
	:	
CRST VAN EXPEDITED, INC.,	:	D E C I S I O N
	:	
Employer,	:	
Self-Insured,	:	Head Notes: 1402.40; 1803; 2502; 2907;
Defendant.	:	5-9999

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Claimant Gary Hawkins appeals from an arbitration decision filed on January 3, 2019. Defendant CRST Van Expedited, Inc., self-insured employer, responds to the appeal. The case was heard on September 12, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 15, 2018.

The deputy commissioner found claimant failed to carry his burden of proof to establish he sustained permanent disability as a result of his stipulated work-related injury which occurred on December 11, 2015. The deputy commissioner found claimant is entitled to receive nothing in the way of permanent partial disability benefits. The deputy commissioner found claimant was not credible.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained permanent disability as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to award claimant industrial disability in the range of 10 percent to 20 percent for the work injury. Claimant asserts the deputy commissioner erred in finding claimant was not credible.

In his appeal brief, claimant asserts for the first time he should be awarded reimbursement from defendant for the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D., on March 29, 2017.

Defendant asserts on appeal that the arbitration decision should be affirmed in its entirety. Defendant also asserts claimant's request for reimbursement for Dr. Bansal's IME should be denied.

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 January 3, 2019, 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 failed to prove he sustained permanent disability as a result of the December 11, 2015, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in the way of permanent partial disability benefits.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant was not credible. 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 claimant's credibility in this matter. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's finding that claimant was not credible.

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

With regard to claimant's request for reimbursement from defendant for the cost of Dr. Bansal's IME, claimant never raised this issue at any point during this proceeding before he raised it in his appeal brief. This issue was not raised by claimant on the hearing report. The issue was not raised or argued by claimant during the hearing, nor did he mention it in his post-hearing brief. Because claimant failed to raise this issue at any time before bringing it up in his appeal brief, I find claimant waived his right to request reimbursement from defendant for the cost of Dr. Bansal's IME, and claimant's request in that regard is denied.

#### ORDER


IT IS THEREFORE ORDERED that the arbitration decision filed on January 3, 2019, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33 claimant 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 6<sup>th</sup> day of May, 2020.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Steve Hamilton            Via WCES

Chris J. Scheldrup        Via WCES