

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BARBARA ERNSTER,

File No. 19003583.01

Claimant,

A P P E A L

vs.

D E C I S I O N

SECOND INJURY FUND OF IOWA,

Defendant.

: Head Notes: 1402.40; 1803; 3202; 5-9998

Claimant Barbara Ernster appeals from an arbitration decision filed on August 17, 2022. Defendant Second Injury Fund of Iowa (the Fund) responds to the appeal. The case was heard on March 2, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 8, 2022.

In the arbitration decision, the deputy commissioner found claimant was not a credible witness. The deputy commissioner found claimant failed to meet her burden of proof to establish she sustained a second qualifying loss to her left leg and therefore, the deputy commissioner found claimant is not entitled to receive benefits from the Fund. The deputy commissioner found the costs of the arbitration proceeding should be taxed to claimant pursuant to 876 Iowa Administrative Code 4.33.

On appeal, claimant asserts the deputy commissioner erred in finding claimant is not a credible witness. Claimant asserts the deputy commissioner erred in finding claimant failed to prove she sustained a second qualifying loss to her left leg, and claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive benefits from the Fund.

The Fund 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 part of this appeal decision.

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 a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable deference to the findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the

record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

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

I 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 August 17, 2022, 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 review-reopening 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 she sustained a second qualifying loss to her left leg, and I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund. I affirm the deputy commissioner's finding that the costs of the arbitration proceeding should be taxed to claimant pursuant to 876 Iowa Administrative Code 4.33.

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 August 17, 2022, 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 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 29th day of December, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Benjamin Roth	(via WCES)
Joseph Lyons	(via WCES)
Jonathan Bergman	(via WCES)