

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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KEVIN LUKKEN,

Claimant,

vs.

MIDAMERICAN ENERGY,

Self-Insured Employer,  
Defendant.

File No. 5055339

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1108; 1400; 1803;  
2208; 5-9998

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**FILED**

JAN 31 2019

WORKERS' COMPENSATION

Claimant Kevin Lukken appeals from an arbitration decision filed on October 4, 2017. Defendant MidAmerican Energy, self-insured employer, responds to the appeal. The case was heard on October 11, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 28, 2016.

The deputy commissioner found claimant failed to carry his burden of proof to establish that his hearing loss and his tinnitus conditions, with an alleged injury date of February 2, 2015, arose out of and in the course of his employment with defendant. The deputy commissioner found claimant is not entitled to receive industrial disability benefits in this matter. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding. The deputy commissioner noted defendant stipulated at the arbitration hearing that it would reimburse claimant for the cost of the independent medical evaluation (IME) of claimant performed by Richard Tyler, Ph.D., on July 30, 2015.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove his hearing loss and tinnitus conditions were caused by his employment with defendant. Claimant asserts the deputy commissioner erred in failing to award claimant industrial disability benefits. Claimant asserts the deputy commissioner erred in failing to order defendant to pay claimant's costs of the arbitration proceeding. Claimant asserts that as of December 1, 2017, when claimant's appeal brief was filed in this matter, defendant had not yet reimbursed claimant for the cost of Dr. Tyler's IME, and claimant requests on appeal that defendant be ordered to reimburse claimant for the cost of the IME.

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

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 October 4, 2017, 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 his hearing loss and tinnitus conditions were caused by his employment with defendant. I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits in this matter. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding. I hereby order defendant to reimburse claimant for the cost of Dr. Tyler's IME if defendant has not already done so. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 4, 2017, is affirmed in its entirety.


Defendant shall reimburse claimant for the cost of Dr. Tyler's IME, if defendant has not already done so.

Claimant shall take nothing further from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own 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 31<sup>st</sup> day of January, 2019.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies To:

Al Sturgeon  
Ron Pohlman  
Attorneys at Law  
911 – 6<sup>th</sup> St.  
Sioux City, IA 51101  
[alsturgeon@siouxlan.net](mailto:alsturgeon@siouxlan.net)  
[mxjudge@gmail.com](mailto:mxjudge@gmail.com)

Sarah K. Kleber  
Attorney at Law  
1128 Historic 4th St  
PO Box 3086  
Sioux City, IA 51102  
[Sarah.kleber@heidmanlaw.com](mailto:Sarah.kleber@heidmanlaw.com)