

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HATA NUHANOVIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5058552

APPEAL
DECISION

FILED

MAR - 8 2019

WORKERS' COMPENSATION

Head Note Nos: 1402.30; 1402.40; 1701;
1802; 1803; 1803.1; 1804; 2204; 2206
2209; 2501; 2907; 4100; 5-9998

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from an arbitration decision filed on August 21, 2018. Claimant Hata Nuhanovic responds to the appeal. The case was heard on March 15, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 6, 2018.

The deputy commissioner found claimant carried her burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant on April 7, 2015, caused claimant to sustain cumulative bilateral carpal tunnel injuries and a cumulative left shoulder injury. The deputy commissioner found claimant failed to carry her burden of proof that the work injury caused injuries to her neck, her right shoulder, her bilateral arms beyond the carpal tunnel injuries, her lower back, her left leg, left heel, chronic myofascial pain syndrome and a mental/psychological injury. The deputy commissioner found claimant reached maximum medical improvement for the work injury on October 5, 2017. The deputy commissioner found claimant is not entitled to receive a running award for healing period benefits for the work injury. The deputy commissioner found claimant sustained 60 percent industrial disability as a result of the work injury which entitles claimant to receive 300 weeks of permanent partial disability (PPD) benefits commencing on January 10, 2017. The deputy commissioner found claimant failed to carry her burden of proof that she is permanently and totally disabled under either the traditional industrial disability analysis or under the odd-lot analysis. The deputy commissioner found claimant is entitled to receive healing period benefits from March 11, 2017, through October 5, 2017. The deputy commissioner found claimant is entitled to payment by defendant for all medical charges itemized in Exhibits 12 and 15 casually related to claimant's bilateral carpal tunnel injuries and claimant's left shoulder injury, and the deputy commissioner found defendant is entitled to a credit for all causally related medical charges paid through claimant's group health insurance offered through defendant. The deputy commissioner found defendant is responsible for all necessary future medical care for claimant's bilateral carpal tunnel injuries and for claimant's left shoulder injury. The deputy

commissioner found claimant is not entitled to alternate medical care. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$677.77.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained a cumulative left shoulder condition as a result of the work injury. Defendant asserts the deputy commissioner erred in failing to find claimant's disability resulting from the work injury is confined to scheduled member functional disability for the cumulative bilateral carpal tunnel injuries. Defendant asserts the deputy commissioner erred in awarding claimant industrial disability. In the alternative, defendant asserts that if it is found on appeal that the work injury did cause claimant's left shoulder condition, the award for industrial disability should either be reduced substantially or reversed entirely. Defendant asserts the deputy commissioner erred in finding defendant is responsible for the requested past medical charges itemized in Exhibits 12 and 15 which are related to claimant's left shoulder condition. Defendant asserts the deputy commissioner erred in finding defendant is responsible for all necessary future medical care for claimant's left shoulder condition.

Claimant 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 August 21, 2018, 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 carried her burden of proof that the April 7, 2015, work injury caused claimant to sustain cumulative bilateral carpal tunnel injuries and a cumulative left shoulder injury. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that the work injury caused injuries to her neck, her right shoulder, her bilateral arms beyond the carpal tunnel injuries, her lower back, her left leg, left heel, chronic myofascial pain syndrome and a mental/psychological injury. I affirm the deputy commissioner's finding that claimant reached maximum medical improvement for the work injury on October 5, 2017. I affirm the deputy commissioner's finding that claimant is not entitled to receive

a running award for healing period benefits. I affirm the deputy commissioner's finding that claimant sustained 60 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she is permanently and totally disabled under either the traditional industrial disability analysis or under the odd-lot analysis. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from March 11, 2017, through October 5, 2017. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant for all medical charges itemized in Exhibits 12 and 15 casually related to claimant's bilateral carpal tunnel injuries and claimant's left shoulder injury. I affirm the deputy commissioner's finding that defendant is entitled to receive a credit for all causally related medical charges paid through claimant's group health insurance offered through defendant. I affirm the deputy commissioner's finding that defendant is responsible for all necessary future medical care for claimant's bilateral carpal tunnel injuries and for claimant's left shoulder injury. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$677.77. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 21, 2018, is affirmed in its entirety.

All weekly benefits shall be paid at the weekly rate of four hundred ten and 49/100 dollars (\$410.49).

Defendant shall pay claimant healing period benefits from March 11, 2017, through October 5, 2017.

Defendant shall pay claimant three hundred (300) weeks of permanent partial disability benefits, commencing on January 10, 2017.

Defendant shall receive a credit for all benefits previously paid.

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 Tech., File No. 5054686 (App. Apr. 24, 2018).

Defendant is responsible for all causally related medical charges for claimant's bilateral carpal tunnel condition and left shoulder condition only itemized in Exhibits 12

and 15, and defendant is entitled to a credit for all medical charges paid through claimant's group health insurance offered through defendant.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of \$677.77, and the parties shall split 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 8th day of March, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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