

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 ANTONIO PALMER,

Claimant,

vs.

 NOR-AM COLD STORAGE, INC., and
 PREMIER SERVICES, INC., d/b/a
 J&L ENTERPRISES,

Employer,

and

 UNITED WISCONSIN INSURANCE
 COMPANY and
 WESCO INSURANCE COMPANY,

 Insurance Carrier,
 Defendants.

File No. 5067030

A P P E A L

D E C I S I O N

 Head Notes: 1403.30; 1601; 2000; 2001,
 2907; 5-9998

Claimant Antonio Palmer appeals from an arbitration decision filed on March 29, 2021. Defendants Nor-Am Cold Storage, Inc. (Nor-Am), employer, and its insurer, United Wisconsin Insurance Company, and defendants Premier Services, Inc., d/b/a J&L Enterprises (Premier), employer, and its insurer, Wesco Insurance Company, respond to the appeal. The case was heard on November 6, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 12, 2020.

In the arbitration decision, the deputy commissioner found Nor-Am and Premier were not dual employers of claimant, as alleged, when the stipulated work injury occurred on October 8, 2018. The deputy commissioner found claimant was employed solely by Premier. The deputy commissioner found that pursuant to Iowa Code section 85.16(2), Premier carried its burden of proof to establish claimant was intoxicated when the work injury occurred. The deputy commissioner found claimant failed to overcome the section 85.16(2) presumption that claimant's intoxication was a substantial factor in causing the work injury, and the deputy commissioner therefore found claimant is barred entirely from any recovery in this matter. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding, and the deputy

commissioner ordered that the cost of the hearing transcript be apportioned one-third to claimant, one-third to Nor-Am and one third to Premier.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant was intoxicated when the work injury occurred. Claimant asserts the deputy commissioner erred in finding claimant failed to overcome the section 85.16(2) presumption that claimant's intoxication was a substantial factor in causing the work injury. Claimant asserts the deputy commissioner erred in finding claimant is barred from any recovery in this matter.

All defendants assert 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 March 29, 2021, 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 Nor-Am and Premier were not dual employers of claimant when the work injury occurred. I affirm the deputy commissioner's finding that claimant was employed solely by Premier. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.16(2), Premier carried its burden of proof to establish claimant was intoxicated when the work injury occurred. I affirm the deputy commissioner's finding that claimant failed to overcome the section 85.16(2) presumption that claimant's intoxication was a substantial factor in causing the work injury, and I affirm the deputy commissioner's finding that claimant is barred entirely from any recovery in this matter. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding, and I affirm the deputy commissioner's order that the cost of the hearing transcript be apportioned one-third to claimant, one-third to Nor-Am and one third to Premier.

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

ORDER

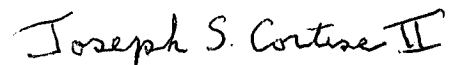
IT IS THEREFORE ORDERED that the arbitration decision filed in this matter on March 29, 2021, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, the cost of the hearing transcript shall be apportioned one-third to claimant, one-third to defendant Nor-Am, and one-third to defendant Premier, and the costs of the appeal, if any, shall be paid by claimant.

Pursuant to rule 876 IAC 3.1(2), defendants Premier and Wesco shall file subsequent reports of injury as required by this agency.

Signed and filed on this 26th day of August, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mary Hamilton (via WCES)

Andrew Portis (via WCES)

Andrew Tice (via WCES)