

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TODD TRIMBLE,

Claimant,

vs.

PEPSI BEVERAGES CO.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,Insurance Carrier,
Defendants.File Nos. 19700505.01
19700262.01

A P P E A L

D E C I S I O N

Head Notes: 1108.50; 1402.20; 1402.40;
1402.50; 1803; 2208; 2401;
2402; 2501; 2502; 2907;
4000.2; 5-9998

Claimant Todd Trimble appeals from an arbitration decision filed on July 13, 2021. Defendants Pepsi Beverages Co., employer, and its insurer, Indemnity Insurance Company of North America, cross-appeal. The case was heard on November 4, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 31, 2020.

In the arbitration decision, in File No. 19700505.01, alleged injury date of April 16, 2019, the deputy commissioner found claimant failed to carry his burden of proof to establish he sustained an injury to his left knee which arose out of and in the course of his employment with defendant-employer. The deputy commissioner found that because claimant failed to prove causation and compensability with regard to his left knee condition, all other issues raised in File No. 19700505.01 are moot. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding in File No. 19700505.01.

In File No 19700262.01, alleged injury date of June 28, 2019, the deputy commissioner found claimant's occupational hearing loss claim was not ripe for determination under Iowa Code section 85B.8. The deputy commissioner found claimant carried his burden of proof to establish he sustained work-related tinnitus as a result of his employment with defendant-employer, and the deputy commissioner found claimant sustained 2.5 percent whole-body impairment from the tinnitus, which entitles claimant to receive 12.5 weeks of permanent partial disability (PPD) benefits

commencing on the stipulated commencement date of June 28, 2019. The deputy commissioner found that with regard to claimant's tinnitus claim, defendants failed to carry their burden of proof to establish their Iowa Code section 85.23 90-day notice defense and their Iowa Code section 85.26 statute of limitations defense. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for an unreasonable denial of liability of claimant's tinnitus claim. The deputy commissioner found defendants are responsible for all reasonable and necessary ongoing medical care and supplies for claimant's tinnitus. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the independent medical evaluation (IME) of claimant performed by Richard Tyler, Ph.D. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding in File No. 19700262.01.

In File No. 19700505.01, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained a work-related injury to his left knee on April 16, 2019, as alleged. Claimant asserts the deputy commissioner erred in finding all other issues raised in File No. 19700505.01 are moot. Claimant asserts the deputy commissioner erred in failing to tax defendants with claimant's costs of the arbitration proceeding in File No. 19700505.01.

In File No. 19700262.01, claimant asserts on appeal that the deputy commissioner erred in finding claimant's occupational hearing loss claim was not ripe for determination. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to industrial disability benefits for his hearing loss and tinnitus claims. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits from defendants for an unreasonable denial of liability of claimant's tinnitus claim. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive reimbursement from defendants for Dr. Tyler's IME. Claimant asserts the deputy commissioner erred in failing to tax defendants with claimant's costs of the arbitration proceeding in File No. 19700262.01.

In File No 19700262.01, defendants assert on cross-appeal that the deputy commissioner erred in finding claimant proved he sustained work-related tinnitus as a result of his employment with defendant-employer, and defendants assert the deputy commissioner erred in awarding claimant any PPD benefits for that alleged injury. Defendants assert the deputy commissioner erred in finding defendants are responsible for all reasonable and necessary ongoing medical care and supplies for claimant's tinnitus. Defendants assert the deputy commissioner erred in finding that with regard to claimant's tinnitus claim, defendants failed to prove their Iowa Code section 85.23 90-day notice defense and their Iowa Code section 85.26 statute of limitations defense.

Those portions of the proposed arbitration 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 July 13, 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.

In File No. 19700505.01, I affirm the deputy commissioner's finding that claimant failed to prove he sustained a work-related injury to his left knee. I affirm the deputy commissioner's finding that all other issues raised in File No. 19700505.01 are moot. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding in File No. 19700505.01.

In File No 19700262.01, I affirm the deputy commissioner's finding that claimant's occupational hearing loss claim was not ripe for determination under Iowa Code section 85B.8. I affirm the deputy commissioner's finding that claimant proved he sustained work-related tinnitus as a result of his employment with defendant-employer, and I affirm the deputy commissioner's finding that claimant sustained 2.5 percent whole-body impairment from the tinnitus. I affirm the deputy commissioner's finding that with regard to claimant's tinnitus claim, defendants failed to prove their Iowa Code section 85.23 90-day notice defense and their Iowa Code section 85.26 statute of limitations defense. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants for an unreasonable denial of liability of claimant's tinnitus claim. I affirm the deputy commissioner's finding that defendants are responsible for all reasonable and necessary ongoing medical care and supplies for claimant's tinnitus. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for Dr. Tyler's IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding in File No. 19700262.01.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues in both files.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 13, 2021, is affirmed in its entirety

File No. 19700505.01 - Alleged Date of injury April 16, 2019:

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, 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), defendants shall file subsequent reports of injury as required by this agency.

File No. 19700262.01 - Date of injury June 28, 2019:

Defendants shall pay claimant twelve point five (12.5) weeks of permanent partial disability benefits at the stipulated weekly rate of six hundred forty-eight and 51/100 dollars (\$648.51), commencing on the stipulated commencement date of June 28, 2019.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants shall pay for all reasonable and necessary ongoing medical care and supplies for claimant's tinnitus.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, 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), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 17th day of November, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Bob Rush (via WCES)

Andrew Giller (via WCES)

Timothy Wegman (via WCES)