

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GINGER TENLEY f/k/a GINGER JONES,

Claimant,

vs.

LOPAREX, INC.,

Employer,
and

SENTRY INSURANCE,

Insurance Carrier,
Defendants.

File No. 5022825

A P P E A L
D E C I S I O N

FILED

JUL 24 2009

WORKERS' COMPENSATION

Head Note Nos.: 1801.1; 1803; 1402.40

Upon written delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa workers' compensation commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of September 9, 2008 filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis:

In this case, the denial of permanency benefits was based in part on the hearing deputy's assessment that claimant was not a credible witness concerning her current shoulder problems. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing. The deputy who presided at the hearing had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. My ability to find the true facts that are affected by witness demeanor and credibility cannot be expected to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation.

Claimant shall pay the costs of this appeal, including transcription fees.

Signed and filed this 24th day of July, 2009.



LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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