

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN WILIMEK,

Claimant,

vs.

CENEX HARVEST STATES,

Employer,

and

OLD REPUBLIC INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

File No. 5064037

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 1801; 1803; 2501;  
2502; 2701; 2907; 5-9998

Claimant Brian Wilimek appeals from an arbitration decision filed on October 16, 2019. Defendants Cenex Harvest States, employer, and its insurer, Old Republic Insurance Company, respond to the appeal. The case was heard on August 14, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 9, 2019.

The deputy commissioner found claimant failed to carry his burden of proof to establish he sustained an injury as alleged 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, all other issues raised in this matter are moot, including claimant's alleged entitlement to temporary and permanent disability benefits, his alleged entitlement to payment for requested past medical expenses, and his alleged entitlement to ongoing medical treatment. The deputy commissioner also found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Farid Manshadi on March 13, 2019. The deputy commissioner found claimant is entitled to receive nothing in this matter. The deputy commissioner also ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained a work-related injury as alleged. Claimant asserts the deputy commissioner erred in finding all other issues raised in this matter are moot.

Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Manshadi's IME. Claimant asserts the deputy commissioner erred in finding claimant is entitled to receive nothing in this matter. Claimant asserts the deputy commissioner erred in ordering the parties to pay their own costs of the arbitration proceeding.

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 October 16, 2019, 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 he sustained a work-related injury as alleged. I affirm the deputy commissioner's finding that because claimant failed to prove causation and compensability, all other issues raised in this matter are moot. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Manshadi's IME. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in this matter. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 16, 2019, 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, and claimant shall pay 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 18<sup>th</sup> day of June, 2020.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Robert Gainer (via WCES)