

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL HINES,

File No. 20700462.01

Claimant,

A P P E A L

vs.

D E C I S I O N

TYSON FOODS, INC.,

Employer,  
Self-Insured,  
Defendant.: Headnotes: 1402.20; 1402.30; 1402.40;  
: 1402.60; 1802; 1803; 1804;  
: 2206; 2501; 2502; 2907;  
: 5-9998

Defendant Tyson Foods, Inc., self-insured employer, appeals from an arbitration decision filed on January 18, 2022. Claimant Michael Hines cross-appeals. The case was heard on July 14, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 16, 2021.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained a permanent cumulative work-related material aggravation of his pre-existing low back condition with an injury date of March 2, 2020. The deputy commissioner found claimant is entitled to an award of permanency based on industrial disability rather than an award based on claimant's functional impairment rating under Iowa Code section 85.34(2)(v) because defendant never actually offered claimant a specific position with specific earnings and other specific terms when claimant reached maximum medical improvement (MMI) following the injury. The deputy commissioner found claimant sustained 80 percent industrial disability because of the injury, which entitles claimant to receive 400 weeks of permanent partial disability benefits commencing on April 20, 2021. The deputy commissioner found claimant is entitled to receive healing period benefits for the week of April 20, 2020, and from May 11, 2020, through April 19, 2021. The deputy commissioner found defendant is not entitled to a credit for short-term disability payments received by claimant. The deputy commissioner found claimant is entitled to receive penalty benefits from defendant in the amount of \$500.00 for an unreasonable failure to pay weekly benefits from June 23, 2021, until July 14, 2021. The deputy commissioner found defendant is responsible for the cost of all causally-related medical care claimant has received for the injury, and may need in the future, including the outstanding charges itemized in Exhibit 5. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendant for the cost of the independent medical evaluation (IME) of claimant performed by David Segal, M.D. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$204.40.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury, and in awarding claimant temporary disability benefits and permanent disability benefits. In the alternative, defendant asserts if it is found on appeal that claimant did sustain a permanent work-related injury, it should be found claimant is entitled to an award of permanency based on claimant's functional impairment rating under Iowa Code section 85.34(2)(v) rather than an award based on industrial disability. In the alternative, defendant asserts if it is found on appeal that claimant is entitled to receive industrial disability benefits, the award for industrial disability should be reduced substantially. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive penalty benefits. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive medical benefits.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to find claimant is permanently and totally disabled because of the work injury. Claimant asserts the award for penalty benefits should be increased substantially.

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 January 18, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 proved he sustained a permanent cumulative work-related material aggravation of his pre-existing low back condition with an injury date of March 2, 2020. I affirm the deputy commissioner's finding that claimant is entitled to an award of permanency based on industrial disability rather than an award based on claimant's functional impairment rating under Iowa Code section 85.34(2)(v) because defendant never actually offered claimant a specific position with specific earnings and other specific terms when claimant reached MMI following the injury. I affirm the deputy commissioner's finding that claimant sustained 80 percent industrial disability because of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits for the week of April 20, 2020, and from May 11, 2020, through April 19, 2021. I affirm the deputy commissioner's finding that defendant is not entitled to a credit for short-term disability payments received by claimant. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits from defendant in the amount of \$500.00 for an unreasonable failure to pay weekly benefits from June 23, 2021, until July 14, 2021. I affirm the deputy commissioner's finding that defendant is responsible for the cost of all causally-related medical care claimant has received for the injury, and

may need in the future, including the outstanding charges itemized in Exhibit 5. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendant for the cost of Dr. Segal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$204.40.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 18, 2022, is affirmed in its entirety.

Defendant shall pay claimant healing period benefits for the week of April 20, 2020, and from May 11, 2020, through April 19, 2021, at the stipulated weekly rate of six hundred sixty and 35/100 dollars (\$660.35).

Defendant shall pay claimant four hundred (400) weeks of permanent partial disability benefits at the stipulated weekly rate of six hundred sixty and 35/100 dollars (\$660.35), commencing on the stipulated commencement date of April 20, 2021.

Defendant 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.

Defendant shall pay Claimant five hundred and 00/100 dollars (\$500.00) in penalty benefits.

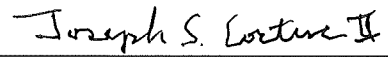
Defendant is responsible for the cost of all causally-related medical care claimant has received, and may need in the future for the injury, including the outstanding charges itemized in Exhibit 5.

Pursuant to Iowa Code section 85.39, defendant shall reimburse claimant in the amount of four thousand five hundred and 00/100 dollars (\$4,500.00) for the cost of Dr. Segal's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of two hundred four and 40/100 dollars (\$204.40), 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 13<sup>th</sup> day of May, 2022.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Joseph Powell (via WCES)

Jason Wiltfang (via WCES)

Chris Scheldrup (via WCES)