

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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RACHEL LYNN LESTER,

Claimant,

vs.

HORMEL FOODS CORP.,

Employer,  
Self-Insured,  
Defendant.

File No. 1663612.01

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 1402.40; 1402.50;  
1403.30; 2502; 2802; 2907;  
5-9998

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Claimant Rachel Lynn Lester appeals from an arbitration decision filed on May 19, 2021, and from a ruling on motion for rehearing filed on June 17, 2021. Defendant Hormel Foods Corp., self-insured employer, responds to the appeal. The case was heard on August 18, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 16, 2020.

The deputy commissioner found claimant sustained an injury that arose out of and in the course of her employment with defendant on September 15, 2017. However, the deputy commissioner found defendant carried its burden of proof to establish that claimant failed to give timely notice of her injury. As a result, the deputy commissioner found claimant's claim is barred by the application of Iowa Code section 85.23. The deputy commissioner also found claimant is not entitled to reimbursement for her independent medical examination (IME). The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

On appeal, claimant asserts the deputy commissioner failed to comply with the provisions in Iowa Code section 17A.16(1), and the Supreme Court holdings in Burton v. Hilltop Care Center, 813 N.W.2d 250, 259-260, 263 (Iowa 2012). Claimant argues the deputy commissioner failed to make explicit credibility findings, rejected material evidence without stated reasons, failed to consider an inference presented to him, and placed an inappropriate burden on claimant regarding defendant's notice defense.

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 May 19, 2021, and the ruling on motion for rehearing filed on June 17, 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 claimant proved she sustained an injury that arose out of and in the course of her employment on September 15, 2017. However, I also affirm the deputy commissioner's finding that defendant proved claimant failed to give timely notice of her injury pursuant to Iowa Code section 85.23. As such, I affirm the deputy commissioner's finding that claimant's claim for benefits is barred. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement from defendant for her IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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

While I performed a de novo review on appeal, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. While the deputy commissioner did not explicitly make a credibility finding, I find the deputy commissioner correctly assessed the credibility of the witnesses through the deputy commissioner's implied findings. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 19, 2021, and the ruling on motion for rehearing filed on June 17, 2021, are affirmed in their 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 23<sup>rd</sup> day of November, 2021.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Mark Soldat (via WCES)

Abigail Wenninghoff (via WCES)