

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRYAN FREESE,

Claimant,

vs.

TREEHOUSE FOODS, INC.,

Employer,

and

TRAVELERS INDEMNITY INSURANCE  
COMPANY OF CONNECTICUT,Insurance Carrier,  
Defendants.

File No. 20004609.01

A P P E A L

D E C I S I O N

: Head Notes: 1402.40; 1403.30; 1803; 2208;  
: 2401; 2501; 2502; 2701; 2801;  
: 2907, 4000.2; 5-9999

Defendants Treehouse Foods, Inc., employer, and its insurer, Travelers Indemnity Insurance Company of Connecticut, appeal from an arbitration decision filed on February 8, 2022. Claimant Bryan Freese cross-appeals. The case was heard on August 23, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 8, 2021.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained occupational hearing loss and tinnitus arising out of and in the course of his employment with defendant-employer. The deputy commissioner found claimant provided timely notice of his claims under Iowa Code section 85.23. The deputy commissioner found claimant sustained 20 percent industrial disability as a result of the work injury, which entitles claimant to receive 100 weeks of permanent partial disability benefits, commencing on the stipulated commencement date of June 26, 2018. The deputy commissioner declined to award claimant requested past medical expenses because claimant did not address the issue in his post-hearing brief. The deputy commissioner granted claimant's request for alternate medical care, including bilateral hearing aids, bilateral cochlear implants, if indicated, and counseling and sound therapy for his tinnitus, and the deputy commissioner found defendants should retain the right to select the authorized provider for claimant's treatment, provided defendants authorize a provider promptly. The deputy commissioner found defendants set forth no evidence establishing the reasonableness of the investigation they conducted, or the reasons for their denial of benefits, and the deputy commissioner found defendants did not contemporaneously convey the bases for the delay of benefits and should be assessed a \$22,000.00 penalty to deter similar conduct in the future.

The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of the evaluation of claimant performed by Richard Tyler, Ph.D. However, the deputy commissioner found defendants should reimburse claimant for the \$1,975.00 cost of Dr. Tyler's report and the \$100.00 filing fee under 876 IAC 4.33(7). The deputy commissioner declined to assess defendants the \$195.00 charge from Dr. Tyler for "reading documents, preparation of report."

Defendants assert on appeal that the deputy commissioner erred in finding claimant proved he sustained occupational hearing loss and tinnitus arising out of and in the course of his employment. Defendants assert the deputy commissioner erred in finding claimant provided timely notice of his claims under Iowa Code section 85.23. Defendants assert the deputy commissioner erred in finding claimant sustained 20 percent industrial disability. Defendants assert the deputy commissioner erred in finding claimant is entitled to alternate medical care. Defendants assert the deputy commissioner erred in assessing a \$22,000.00 penalty against defendants. Defendants assert the deputy commissioner erred in assessing the \$1,975.00 cost of Dr. Tyler's report against defendants.

Claimant asserts on cross-appeal that the deputy commissioner erred in declining to assess defendants with the medical charges from Broadlawns Medical Center in the amount of \$437.00 because defendants sent claimant to Broadlawns for treatment. Defendants agreed to pay the Broadlawns charges in their reply brief, therefore, the issue is now moot. Claimant asserts the remainder of the arbitration decision should be affirmed.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the arbitration decision filed on February 8, 2022, is affirmed in part, and is modified in part.

I affirm the deputy commissioner's finding that claimant proved he sustained occupational hearing loss and tinnitus arising out of and in the course of his employment with defendant-employer. I affirm the deputy commissioner's finding that claimant provided timely notice of his claims under Iowa Code section 85.23. I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability. I modify the deputy commissioner's finding that claimant is not entitled to recover medical bills set forth in Exhibit 3. Defendants are responsible for the \$437.00 charge from Broadlawns Medical Center, but not for the St. Luke's audiogram. I affirm the deputy commissioner's finding that claimant is entitled to alternate medical care, including bilateral hearing aids, bilateral cochlear implants, if indicated, and counseling and sound therapy for his tinnitus, and I affirm the finding that defendants retain the right to select the authorized provider for claimant's treatment, provided defendants authorize a provider promptly. I affirm the deputy commissioner's finding that defendants set forth no evidence establishing the reasonableness of the investigation

they conducted, or the reasons for their denial of benefits, and I affirm the finding that defendants did not contemporaneously convey the bases for the delay of benefits and should be assessed a \$22,000.00 penalty to deter similar future conduct. I affirm the deputy commissioner's finding that claimant is not entitled to recover the cost of Dr. Tyler's examination under Iowa Code section 85.39. I affirm the deputy commissioner's finding that defendants should reimburse claimant for the \$1,975.00 cost of Dr. Tyler's report and the \$100.00 filing fee under 876 IAC 4.33(7), but not the \$195.00 cost of the supplemental report.

### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 8, 2022, is affirmed in part, and is modified in part.

Defendants shall pay claimant 100 weeks of permanent partial disability benefits commencing on the stipulated commencement date of June 26, 2018, at the stipulated weekly rate of six hundred ninety-eight and 76/100 dollars (\$698.76).

Defendants shall pay accrued 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 promptly select and authorize a medical provider to provide claimant with additional treatment for his occupational hearing loss and tinnitus, including bilateral hearing aids, bilateral cochlear implants, if deemed appropriate, and counseling and sound therapy devices for his tinnitus.

Defendants shall retain the right to select and authorize a medical provider of their choosing to provide the above-ordered medical care provided defendants authorize this care promptly.

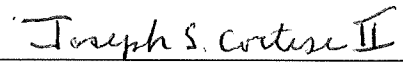
Defendants are responsible for the four hundred thirty-seven dollar (\$437.00) medical bill from Broadlawns Medical Center.

Defendants shall pay claimant penalty benefits in the amount of twenty-two thousand and 00/100 dollars (\$22,000.00).

Pursuant to 876 IAC 4.33(7) defendants shall reimburse claimant one hundred and 00/100 dollars (\$100.00) for the cost of the filing fee and one thousand nine hundred seventy-five and 00/100 dollars (\$1,975.00) for the cost of Dr. Tyler's report, and defendants 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 14<sup>th</sup> day of July, 2022.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Andrew Giller (via WCES)

Julie Burger (via WCES)