

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

U MYINT,

Claimant,

vs.

JBS USA, LLC,

Employer,

and

AMERICAN ZURICH INSURANCE
COMPANYInsurance Carrier,
Defendants.

File No. 5066579

A P P E A L

D E C I S I O N

Head Notes: 1108; 1402.40; 1803; 2206;
2502; 2907; 5-9998

Claimant U Myint appeals from an arbitration decision filed on January 15, 2020. Defendants JBS USA, LLC, employer, and its insurer, American Zurich Insurance Company, respond to the appeal. The case was heard on November 27, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 26, 2019.

The deputy commissioner found claimant's testimony was not reliable, reasonable or consistent throughout the hearing. As a result, the deputy commissioner found claimant was not a credible witness. The deputy commissioner found claimant failed to establish that the March 15, 2017 work injury permanently aggravated, accelerated, worsened, or "lighted up" his right knee osteoarthritis, necessitating a total knee replacement. As a result, the deputy commissioner found claimant was not entitled to recover the expenses related to his total knee replacement. However, the deputy commissioner did find claimant proved he sustained a meniscal tear caused by the March 15, 2017, work injury. The deputy commissioner found claimant sustained two percent permanent scheduled member functional disability of his right lower extremity from the meniscal tear, entitling claimant to receive 4.4 weeks of permanent partial disability benefits, all of which was already paid at the time of the hearing. The deputy commissioner found claimant was entitled to receive reimbursement for his independent medical examination (IME) but was not entitled to a costs assessment.

On appeal, claimant asserts the deputy commissioner erred in assessing his credibility. Claimant additionally asserts the deputy commissioner erred in finding

claimant's right knee osteoarthritis was not permanently aggravated or lit up by the work injury. Claimant seeks reimbursement for the medical expenses relating to his osteoarthritis.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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 15, 2020, 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.

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 commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed the credibility of claimant. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

I recognize the language barrier was a significant concern to the deputy commissioner in this case. However, the deputy commissioner weighed those concerns regarding the interpretation difficulties against the entirety of the evidence in this case. The deputy commissioner set forth her rationale and concerns and ultimately determined she did not find claimant's testimony to be reliable, reasonable, or consistent. For those reasons, I find the deputy commissioner provided a well-reasoned analysis as to why she found claimant was not a credible witness.

I affirm the deputy commissioner's finding that claimant failed to establish the March 15, 2017, work injury permanently aggravated, accelerated, worsened, or "lighted up" his right knee osteoarthritis, necessitating a total knee replacement. I likewise affirm the deputy commissioner's finding that claimant was not entitled to recover the medical expenses related to his total knee replacement.

I affirm the deputy commissioner's finding that claimant proved he sustained a meniscal tear caused by the work injury. I affirm the deputy commissioner's finding that claimant sustained two percent permanent scheduled member functional disability of his right lower extremity as a result of the meniscal tear, which entitles claimant to receive 4.4 weeks of permanent partial disability benefits, all of which was already paid at the

time of the hearing. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement for his IME, but is not entitled to an assessment of costs.

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 15, 2020, is affirmed in its entirety.

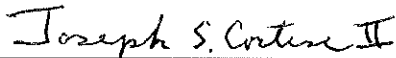
Claimant shall take nothing further from these proceedings.

Defendants shall reimburse claimant in the amount of two thousand five hundred eighty-three and 00/100 dollars (\$2,583.00) for the cost of Dr. Bansal's IME.

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 11th day of August, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Sarah Baumgartner (via WCES)

Patrick V. Waldron (via WCES)