

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TYE MEDHAUG,

Claimant,

vs.

BURKE CORPORATION,

Self-Insured Employer,
Defendant.

File No. 21013184.01

A P P E A L

D E C I S I O N

: Head Notes: 1402.30;1402.50;1403.30;
: 2401; 2501; 2701; 2802;
: 2907; 5-9998

Defendant Burke Corporation, self-insured employer, appeals from an arbitration decision filed on June 2, 2023. Claimant Tye Medhaug responds to the appeal. Hearing in this case commenced on June 2, 2022. The hearing was recessed shortly after it started when claimant made an oral motion, which was granted, to amend the alleged date of injury. Hearing reconvened and was completed on October 11, 2022. After post-hearing briefs were filed on November 18, 2022, this case was considered fully submitted in front of the deputy workers' compensation commissioner.

In the arbitration decision, the deputy commissioner found claimant sustained a left shoulder injury on or around January 17, 2021, that arose out of and in the course of claimant's employment with defendant. The deputy commissioner further found defendant received notice of the work injury within 90 days, and no later than March 17, 2021. In reaching these findings, the deputy commissioner found claimant to be credible and rejected a credibility challenge asserted by defendant. The deputy commissioner found claimant is entitled to an order directing defendant to pay, or reimburse, all past outstanding medical expenses related to the injury. The deputy commissioner found claimant is not at maximum medical improvement (MMI) for the work injury and requires ongoing medical treatment, and the deputy commissioner awarded claimant alternate medical care. Finally, the deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$2,049.68.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant credible. Defendant further asserts the deputy commissioner erred in finding claimant satisfied his burden to prove his injury arose out of and in the course of his employment on or about January 17, 2021. Defendant challenges the deputy commissioner's acceptance of the medical opinions of the treating surgeon, Brian Crites, M.D., and asserts the arbitration decision should be reversed on appeal and no benefits awarded to claimant.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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

I 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on June 2, 2023, 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.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be a credible witness. Defendant asserts claimant was not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable deference to findings of fact, which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

I specifically affirm the deputy commissioner's acceptance of claimant's testimony about the mechanism of injury as well as the deputy commissioner's finding that the injury occurred on or about January 17, 2021. To the extent there is a difference in the testimony between claimant and defense witnesses, I rely upon and I accept the ultimate findings entered by the deputy commissioner, who had the opportunity to view the witnesses at hearing. I specifically accept the medical opinions of Dr. Crites over those offered by Steven Aviles, M.D., in this case. Therefore, I affirm the deputy commissioner's finding that claimant proved he sustained an injury arising out of and in the course of his employment on or around January 17, 2021, and I affirm the deputy commissioner's finding that the employer received timely notice of the injury. I further affirm the deputy commissioner's award of past medical expenses, as well as the award of alternate medical care and 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 June 2, 2023, is affirmed in its entirety.

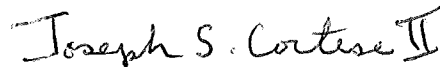
Claimant is entitled to alternate medical care. Defendant shall immediately authorize and timely pay for claimant's continuing care related to the compensable left shoulder injury with providers of claimant's choice, including but not limited to Brian Crites, M.D.

Defendant is responsible for the cost of all causally related medical care claimant received related to the left shoulder injury after the date of defendant's denial.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of two thousand forty-nine and 68/100 dollars (\$2,049.68), and defendant 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 31st day of October, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Christopher Spaulding (via WCES)

Alison Stewart (via WCES)

Jordan Gehlhaar (via WCES)