

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARGARITA De LEANOS,

Claimant,

vs.

PINE RIDGE FARMS,

Employer,

and

GREAT AMERICAN ALLIANCE
INSURANCE COMPANY,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5067831

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 1402.40; 1802;
1803; 1803.1; 2501; 2801;
29007; 3202

Defendants Pine Ridge Farms, employer, and its insurer, Great American Alliance Insurance Company, appeal from an arbitration decision filed on June 17, 2020. Claimant Margarita De Leanos and defendant Second Injury Fund of Iowa (the Fund) respond to the appeal. The case was heard on April 1, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 27, 2020.

The deputy commissioner found claimant carried her burden of proof to establish she sustained a cumulative work-related injury on December 6, 2017, which resulted in a permanent material aggravation of claimant's pre-existing neck, right shoulder, right arm, wrist and hand condition. The deputy commissioner found defendants employer and insurer failed to prove their Iowa Code section 85.23 90-day notice defense. The deputy commissioner found claimant is entitled to receive healing period benefits for the work injury from December 22, 2017, through September 21, 2018. The deputy commissioner found claimant sustained 95 percent industrial disability as a result of the work injury, which entitles claimant to receive 475 weeks of permanent partial disability benefits commencing on September 22, 2018. The deputy commissioner found claimant is not entitled to receive benefits from the Fund. The deputy commissioner found claimant is entitled to payment by defendants employer and insurer for the past requested medical expenses itemized in Exhibit 6, except the charges from Andrei Odobescu, M.D. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding in the amount of \$120.85.

Defendants employer and insurer assert on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury and in finding claimant is entitled to receive healing period benefits and permanent disability benefits. Defendants employer and insurer assert the deputy commissioner erred in finding defendants employer and insurer failed to prove their 90-day notice defense. Defendants employer and insurer assert the deputy commissioner erred in finding claimant is entitled to payment by defendants employer and insurer for the past requested medical expenses.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety, except claimant asserts it should be found claimant is permanently and totally disabled as a result of the work injury.

The Fund asserts on appeal that the finding that claimant is not entitled to receive benefits from the Fund should be affirmed.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the proposed arbitration decision filed on June 17, 2020, is affirmed in part without additional analysis and modified in part with the following analysis.

I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to the following issues:

I affirm the deputy commissioner's finding that claimant proved she sustained a cumulative work-related injury on December 6, 2017, which resulted in a permanent material aggravation of claimant's pre-existing neck, right shoulder, right arm, wrist and hand condition. I affirm the deputy commissioner's finding that defendants employer and insurer failed to prove their Iowa Code section 85.23 90-day notice defense. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits for the work injury from December 22, 2017, through September 21, 2018. I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants employer and insurer for the past requested medical expenses itemized in Exhibit 6, except the charges from Dr. Odobescu. I affirm the deputy commissioner's order that defendants employer and insurer pay claimant's costs of the arbitration proceeding in the amount of \$120.85.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues without further analysis. I modify the deputy commissioner's finding that claimant sustained 95 percent industrial disability as a result of the work injury as follows:

I respectfully disagree with the deputy commissioner's finding that claimant sustained 95 percent industrial disability as a result of the work injury. At page 17 of the arbitration decision, the deputy commissioner states:

Claimant is a 57 year old person who does not speak, read, or write English. Her primary work experience is in the meatpacking industry. Defendant employer did not have a position that could accommodate claimant's work restrictions. There was no evidence at hearing that there was work that she could perform, however, she did not appear motivated to return to work. Dr. Bansal recommended permanent lifting restrictions of 5 pounds with the right hand or 15 pounds with both hands, as well as avoiding work activities that require repeated neck motion or require a flexed position for greater than 15 minutes. It is claimant's burden to prove the extent of disability and while she argues that it is hard to imagine a job that claimant could perform, there was little evidence that she has attempted to return to work or look for positions within her restrictions.

(Arbitration decision, p. 17)

Based upon the deputy commissioner's analysis, and also based on the fact that nowhere in the record does any physician state claimant is not capable of working, and also based on the fact that there is no vocational report in evidence which analyzes claimant's loss of earning capacity, I find claimant has sustained 75 percent industrial disability as a result of the work injury, which entitles claimant to receive 375 weeks of permanent partial disability benefits commencing on September 22, 2018.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 17, 2020, is affirmed in part and is modified in part.

Defendants employer and insurer shall pay claimant temporary total disability benefits from December 22, 2017, through September 21, 2018.

Defendants employer and insurer shall pay claimant three hundred seventy-five (375) weeks of permanent partial disability benefits at the weekly rate of four hundred forty-two and 09/100 dollars (\$442.09) commencing on September 22, 2018.

Defendants employer and insurer 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Claimant shall take nothing from the Second Injury Fund of Iowa.

Defendants employer and insurer shall pay the requested past medical expenses itemized in Exhibit 6, except for the charges of Dr. Odobescu.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of one hundred twenty and 85/100 dollars (\$120.85), 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), defendants employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 7th day of January, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Byrne (via WCES)

Lindsey Mills (via WCES)

Meredith Cooney (via WCES)