

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACOB FOLEY,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS,

Employer,
Self-Insured,
Defendant.

File No. 19006619.02

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1402.50;
1402.60; 1802; 1803; 2401;
2501; 2502; 2701; 2907; 5-9998

Defendant John Deere Dubuque Works, self-insured employer, appeals from an arbitration decision filed on February 7, 2023. Claimant Jacob Foley responds to the appeal. The case was heard on August 8, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 7, 2022.

In the arbitration decision, the deputy commissioner found claimant provided defendant with timely notice of claimant's injury under Iowa Code section 85.23. The deputy commissioner found claimant met his burden of proof to establish the stipulated June 24, 2019, work injury to claimant's right upper extremity extends into his right shoulder. The deputy commissioner found claimant is not at maximum medical improvement (MMI) for the work injury. The deputy commissioner found defendant is responsible for the medical bills set forth in Exhibit 1. The deputy commissioner found claimant is entitled to alternate care for his right shoulder with Joseph Buckwalter, M.D., at the University of Iowa Hospitals and Clinics. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant for the cost of the independent medical examination (IME) of claimant conducted by Robin Sassman, M.D. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant proved he sustained an injury to his right shoulder caused by the work injury to claimant's right upper extremity. Defendant asserts the deputy commissioner erred in finding claimant is not at MMI for the work injury, and defendant asserts claimant's recovery is limited to four percent functional impairment of claimant's right upper extremity. Defendant asserts the deputy commissioner erred in finding claimant provided defendant with timely notice of the injury under Iowa Code section 85.23.

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.

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 was a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable deference to the 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.

In the arbitration decision, the deputy commissioner refers to an injury to claimant's left elbow at page 5 and left upper extremity at page 7. The records at issue in this matter relate to an injury to claimant's right upper extremity. Neither party raised this as an issue on appeal. The stipulated injury is to the right upper extremity, not the left upper extremity. I find the references to the left elbow and left upper extremity to be scrivener's errors, which do not impact the outcome of this case.

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 February 7, 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.

I affirm the deputy commissioner's finding that claimant provided defendant with timely notice of the injury under Iowa Code section 85.23. I affirm the deputy commissioner's finding that claimant proved the stipulated June 24, 2019, injury to his right upper extremity extends into his right shoulder. I affirm the deputy commissioner's finding that claimant is not at MMI for the work injury. I affirm the deputy commissioner's finding that defendant is responsible for the medical bills set forth in Exhibit 1. I affirm the deputy commissioner's finding that claimant is entitled to alternate care for his right shoulder with Dr. Buckwalter. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant for the cost of Dr. Sassman's IME. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding.

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 February 7, 2023, is affirmed in its entirety.

Defendant is responsible for the medical expenses set forth in Exhibit 1.

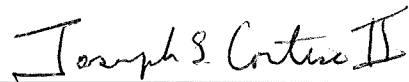
Defendant shall authorize treatment for claimant's right shoulder with Dr. Buckwalter.

Pursuant to Iowa Code section 85.39, defendant shall reimburse claimant for the cost of Dr. Sassman's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding, and defendant 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 13th day of July, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mark Sullivan (via WCES)

Dirk Hamel (via WCES)

Stephanie Techau (via WCES)