

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLES WHITACRE,

Claimant,

vs.

AVERA HOLY FAMILY,

Self-Insured Employer,

Defendant.

File Nos. 5061284, 5061285

A P P E A L

D E C I S I O N

: Head Note Nos: 1402.40; 1402.50; 1403.30;
: 2907; 5-9998

Claimant Charles Whitacre appeals from an arbitration decision filed on July 20, 2021. Defendant Avera Holy Family, self-insured employer, cross-appeals. The case was heard on October 7, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 12, 2020.

In the arbitration decision, the deputy commissioner found claimant sustained injuries on March 17, 2016, and on June 13, 2016, that arose out of and in the course of his employment with defendant. The deputy commissioner also found claimant provided defendant with timely notice of both of those injuries. However, the deputy commissioner found claimant failed to prove he sustained any disability as a result of the injuries.

Claimant asserts on appeal that the work injuries aggravated his back condition and resulted in permanent disability.

On cross-appeal, defendant asserts claimant did not sustain work-related injuries or, in the alternative, failed to provide timely notice of the injuries.

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

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 July 20, 2021, 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.

I affirm the deputy commissioner's finding that claimant sustained work-related injuries on March 17, 2016, and on June 13, 2016. I likewise affirm the deputy commissioner's finding that claimant gave defendant timely notice of those injuries. However, I affirm the deputy commissioner's finding that claimant failed to prove he sustained any disability as a result of the injuries.

I affirm the deputy commissioner's findings, conclusions and analysis regarding 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 and the additional witnesses in this case. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 20, 2021, is affirmed in its entirety.

Claimant shall take nothing further from these proceedings.

Pursuant to rule 876 IAC 4.33, each party shall pay their own costs of the arbitration proceeding, and the parties shall split the cost 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 7th day of December, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

David A. Scott (via WCES)

Matthew Early (via WCES)