

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL B. QUAIL,

Claimant,

vs.

SIMONSEN IRON WORKS,

Employer,

and

SENTRY INSURANCE,

Insurance Carrier,  
Defendants.

File No. 5055412

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 2500; 4000;  
5-9998

**FILED**  
JAN 31 2019  
WORKERS' COMPENSATION

Claimant Michael B. Quail appeals from an arbitration decision filed on September 15, 2017. Defendants Simonsen Iron Works, employer, and its insurer, Sentry Insurance, respond to the appeal. The case was heard on March 3, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 15, 2017.

The deputy commissioner found claimant failed to carry his burden of proof that the stipulated incident which arose out of and in the course of claimant's employment with defendant-employer on October 5, 2015, caused claimant to sustain a permanent material aggravation of his pre-existing right upper extremity condition. The deputy commissioner also found claimant failed to prove the work incident caused either temporary or permanent injuries to his right shoulder and neck. The deputy commissioner found claimant is entitled to receive no weekly benefits. The deputy commissioner found claimant was not a credible witness. The deputy commissioner found claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 13. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants. The deputy commissioner noted that at the arbitration hearing defendants agreed to pay the cost of the independent medical evaluation (IME) of claimant performed by Marc E. Hines, M.D., on January 13, 2017. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding the work incident did not cause claimant to sustain a permanent material aggravation of his pre-existing right upper extremity condition. Claimant asserts the deputy commissioner erred in finding claimant also failed to prove the work incident caused either temporary

or permanent injuries to claimant's right shoulder and neck. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive industrial disability benefits for the work incident. Claimant asserts the deputy commissioner erred in finding claimant was not a credible witness. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 13. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment of his costs by defendants.

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

Those portions of the proposed agency 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 September 15, 2017, 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 failed to prove that the October 5, 2015, work incident caused claimant to sustain a permanent material aggravation of his pre-existing right upper extremity condition. I affirm the deputy commissioner's finding that claimant also failed to prove the work incident caused either temporary or permanent injuries to his right shoulder and neck. I affirm the deputy commissioner's finding that claimant is entitled to receive no weekly benefits for the work incident. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 13. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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 not credible. Claimant asserts the deputy commissioner erred in finding claimant was not credible. While I performed a de novo review, 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 the deputy commissioner correctly assessed claimant's credibility in this matter. I find nothing in the record in this

matter which would cause me to reverse the deputy commissioner's finding that claimant was not credible.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

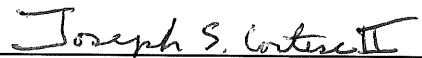
IT IS THEREFORE ORDERED that the arbitration decision filed on September 15, 2017, is affirmed in its entirety.

Claimant shall take nothing additional from these proceedings.

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 31st day of January, 2019.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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