

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIGUELINA VARGAS,	:	
	:	File No. 5041132
Claimant,	:	
	:	A P P E A L
vs.	:	
	:	D E C I S I O N
TYSON FOODS,	:	
	:	
Employer,	:	
Self-Insured,	:	Head Notes: 1402.40; 1803; 2501; 2502;
Defendant.	:	2701; 2905; 2907; 5-9998

Claimant Miguelina Vargas appeals from a review-reopening decision filed on January 30, 2020. Defendant Tyson Foods, self-insured employer, responds to the appeal. The case was heard on August 28, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 15, 2018.

A petition in arbitration was filed by claimant in this matter on June 25, 2012, alleging claimant sustained a work-related right shoulder injury on January 20, 2011. On July 10, 2014, the parties filed an agreement for settlement in which they stipulated claimant sustained 20 percent industrial disability as a result of the January 20, 2011, work injury, which entitled claimant to receive 100 weeks of permanent partial disability benefits commencing on July 26, 2011.

On September 30, 2016, claimant filed a review-reopening action in this matter alleging she sustained a physical change of condition with regard to her right shoulder condition resulting from the January 20, 2011, work injury. The review-reopening action went to hearing on August 28, 2018, and the deputy commissioner who heard the case issued a review-reopening decision on January 30, 2020.

In the review-reopening decision, the deputy commissioner found claimant failed to carry her burden of proof to establish she sustained a physical change of condition for the January 20, 2011, right shoulder injury after the underlying agreement for settlement was filed. The deputy commissioner found claimant is not entitled to receive additional industrial disability benefits in this matter. The deputy commissioner found claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 8. The deputy commissioner found claimant is not entitled to alternate medical care, but the deputy commissioner did order defendants to continue to authorize a physician to evaluate and treat claimant's right shoulder condition as necessary. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the cost of the

independent medical examination (IME) of claimant performed by Sunil Bansal, M.D., on June 15, 2018. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove she sustained a physical change of condition for the January 20, 2011, right shoulder injury after the agreement for settlement was filed. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive additional industrial disability benefits.

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.

I affirm the deputy commissioner's finding that claimant failed to prove she sustained a physical change of condition for the January 20, 2011, right shoulder injury after the underlying agreement for settlement was filed. I affirm the deputy commissioner's finding that claimant is not entitled to receive additional industrial disability benefits in this matter. 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 8. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care. I affirm the deputy commissioner's order that defendants shall continue to authorize a physician to evaluate and treat claimant's right shoulder condition as necessary. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on January 30, 2020, is affirmed in its entirety.

Defendants shall reimburse claimant for the IME expense of Dr. Bansal in the amount of three thousand three hundred seventy-two and no/100 dollars (\$3,372.00).

Claimant shall take nothing further from these proceedings.

Defendants shall continue to authorize a physician to evaluate and treat claimant's work-related right shoulder condition as necessary.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's 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 12th day of October, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Andrew W. Bribriesco (via WCES)

Jason Wiltfang (via WCES)