

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSE OCAMPO,

Claimant,

vs.

NEW FASHION PORK, LLP,

Employer,

and

THE HARTFORD,

Insurance Carrier,
Defendants.

File No. 20012252.01

A P P E A L

D E C I S I O N

: Head Notes: 1402.20, 1402.40; 1703; 1803;
: 2501; 2907; 5-9998

Defendants New Fashion Pork, LLP, employer, and its insurer, The Hartford, appeal from an arbitration decision filed on March 4, 2022. Claimant Jose Ocampo responds to the appeal. The case was heard on May 18, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 9, 2021.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish he sustained 30 percent permanent partial disability as a result of the stipulated June 3, 2019, work injury, which entitled claimant to receive 150 weeks of permanent partial disability (PPD) benefits commencing on July 22, 2019. The deputy commissioner found defendants are not entitled to a credit against the PPD award for temporary benefits paid from June 18, 2019, through July 22, 2019. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of the independent medical examination (IME) of claimant conducted by Sunil Bansal, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,727.05.

Defendants assert on appeal that the deputy commissioner erred in finding claimant proved he is entitled to receive PPD benefits for the work injury. Defendants assert the deputy commissioner erred in finding defendants are not entitled to a credit against the PPD award for the temporary benefits paid from June 18, 2019, through July 22, 2019.

Claimant did not cross-appeal but asserts on appeal that the commissioner should increase the industrial disability award on de novo review.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as 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 March 4, 2022, 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.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding the credibility of claimant and witness Steve Larson. The deputy commissioner found claimant was a credible witness and found Mr. Larson was not a credible witness. I find the deputy commissioner correctly assessed the credibility of claimant and Mr. Larson. While I performed a de novo review on appeal, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant and Steve Larson 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 the credibility of claimant and Steve Larson.

I affirm the deputy commissioner's finding that claimant proved he sustained 30 percent permanent partial disability as a result of the work injury. I affirm the deputy commissioner's finding that defendants are not entitled to a credit against the PPD award for temporary benefits paid from June 18, 2019, through July 22, 2019. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for of the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$1,727.05.

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 March 4, 2022, is affirmed in its entirety.

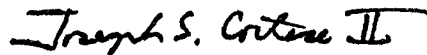
Defendants shall pay claimant 150 weeks of permanent partial disability benefits at the stipulated weekly rate of eight hundred ninety-five and 59/100 dollars (\$895.59), commencing on July 22, 2019.

Defendants 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 Tech., File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand seven hundred twenty-seven and 05/100 dollars (\$1,727.05), and defendants 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 17th day of September, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Byrne (via WCES)

Jessica Voelker (via WCES)