BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CECELIA BONILLA, Claimant, vs. TYSON FRESH MEATS, INC., Employer, Self-Insured, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5060444 A P P E A L D E C I S I O N
CECELIA BONILLA, Claimant, vs. TYSON FRESH MEATS, INC., Employer, Self-Insured, Defendant.	File No. 5060445 A P P E A L D E C I S I O N Head Notes: 1108.50; 1402.40; 1402.60; 1803; 2501; 2502; 2907; 3202; 5-9998

Defendant Second Injury Fund of Iowa (the Fund) appeals from an arbitration decision filed on May 28, 2019. Claimant Cecelia Bonilla also appeals from the arbitration decision. Defendant Tyson Fresh Meats, Inc, self-insured employer, responds to the appeal. The case was heard on April 15, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 3, 2019.

In File No. 5050445, injury date of May 18, 2015, the deputy commissioner found claimant sustained permanent scheduled member functional disability of five percent of her right upper extremity as a result of the stipulated work injury, which entitles claimant

to receive 12.5 weeks of permanent partial disability (PPD) benefits from defendant-employer commencing on May 19, 2015. The deputy commissioner found claimant's permanent disability from the May 18, 2015, work injury does not extend beyond claimant's right upper extremity into her body as a whole. The deputy commissioner found claimant did not sustain permanent disability of her left upper extremity as a result of the May 18, 2015, work injury.

In File No. 5050444, the deputy commissioner found claimant carried her burden of proof to establish she sustained a work-related injury to her left upper extremity on March 13, 2017. The deputy commissioner found claimant sustained permanent scheduled member functional disability of six percent of her left upper extremity as a result of the March 13, 2017, work injury, which entitles claimant to receive 15 weeks of PPD benefits from defendant-employer commencing on March 14, 2017. The deputy commissioner found claimant's permanent disability from the March 13, 2017, work injury does not extend beyond claimant's left upper extremity into her body as a whole.

The deputy commissioner found the two work injuries are qualifying injuries for Fund benefits pursuant to Iowa Code section 85.64. The deputy commissioner found the combination of the two injuries entitles claimant to receive 60 percent industrial disability from the Fund, with appropriate credits, which entitles claimant to receive 272.5 weeks of PPD benefits from the Fund, after deducting a credit for the total of 27.5 weeks of PPD benefits owed by defendant-employer to claimant for the two separate work injuries.

The deputy commissioner found claimant failed to carry her burden of proof to establish she is permanently and totally disabled under either the industrial disability analysis or under the odd-lot analysis as a result of the two work injuries.

The deputy commissioner found claimant failed to carry her burden of proof to establish she sustained a permanent mental health condition as result of either of the two work injuries.

The deputy commissioner found claimant is not entitled to payment by defendant-employer for the past requested medical expenses itemized in Exhibit 9.

The deputy commissioner found that pursuant to Iowa Code Section 85.39, claimant is entitled to reimbursement from defendant-employer for the cost of the IME of claimant performed by Sunil Bansal, M.D., on November 14, 2017.

The deputy commissioner found that pursuant to Iowa Code Section 85.39, claimant is not entitled to reimbursement from defendant-employer for the cost of the IME of claimant performed by Frank Gersh, Ph.D., on December 20, 2018. The deputy commissioner also found claimant is not entitled to reimbursement in any amount under rule 876 IAC 4.33 for the cost of Dr. Gersh's IME report.

The deputy commissioner ordered defendant-employer to pay claimant's costs of the arbitration proceeding in the amount of $702.18.

The Fund asserts on appeal that the deputy commissioner erred in finding claimant sustained separate injuries to her right upper extremity on May 18, 2015, and to her left upper extremity on March 13, 2017. The Fund asserts it should be found on appeal that claimant sustained a single injury to both upper extremities.

The Fund asserts the deputy commissioner erred in finding claimant's injuries are confined to her upper extremities. The Fund asserts it should be found claimant's permanent disability from the work injuries extends beyond her upper extremities into her body as a whole with the result that claimant is not entitled to receive benefits from the Fund.

The Fund asserts the deputy commissioner erred in finding claimant is entitled to receive any benefits from the Fund. The Fund asserts the award against the Fund should be reversed in its entirety.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove she sustained a permanent mental health condition as result of either of the two work injuries, and in failing to award industrial disability benefits to be paid by defendant-employer for that permanent mental health condition. In the alternative, claimant asserts that if it is found on appeal that claimant did not sustain a permanent mental health condition, it should be found that claimant's permanent disability is confined to her upper extremities and the industrial disability award against the Fund should be affirmed.

Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendant-employer for the past requested medical expenses itemized in Exhibit 9.

Claimant asserts the deputy commissioner erred in finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendant-employer for the cost of Dr. Gersh's IME. In the alternative, claimant asserts it should be held on appeal that pursuant to rule 876 IAC 4.33, defendant-employer should be ordered to pay claimant some amount for the cost of Dr. Gersh's IME report.

Defendant-employer asserts 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 May 28, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis 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.

In File No. 5050445, I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of five percent of her right upper extremity as a result of the May 18, 2015, work injury. I affirm the deputy commissioner's finding that claimant's permanent disability from the May 18, 2015, work injury does not extend beyond claimant's right upper extremity into her body as a whole. I affirm the deputy commissioner's finding that claimant did not sustain permanent disability of her left upper extremity as a result of the May 18, 2015, work injury

In File No. 5050444, I affirm the deputy commissioner's finding that claimant carried her burden of proof to establish she sustained a work-related injury to her left upper extremity on March 13, 2017. I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of six percent of her left upper extremity as a result of the March 13, 2017, work injury. I affirm the deputy commissioner's finding that claimant's permanent disability from the March 13, 2017, work injury does not extend beyond claimant's left upper extremity into her body as a whole.

I affirm the deputy commissioner's finding that claimant failed to prove she sustained a permanent mental health condition as result of either of the two work injuries, and I affirm the deputy commissioner's finding that claimant therefore is not entitled to receive industrial disability benefits from defendant-employer for that alleged condition.

I affirm the deputy commissioner's finding that the two work injuries are qualifying injuries for Fund benefits pursuant to Iowa Code section 85.64. I affirm the deputy commissioner's finding that the combination of the two injuries entitles claimant to receive 60 percent industrial disability from the Fund, with appropriate credits for the Fund, which entitles claimant to receive 272.5 weeks of PPD benefits from the Fund, after deducting a credit for the total of 27.5 weeks of PPD benefits owed by defendant-employer to claimant for the two separate work injuries.

I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof to establish she is permanently and totally disabled under either the industrial disability analysis or under the odd-lot analysis as a result of the two work injuries.

I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendant-employer for the past requested medical expenses itemized in Exhibit 9.

I affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.39, claimant is entitled to receive reimbursement from defendant-employer for the cost of Dr. Bansal's IME.

I affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.39, claimant is not entitled to receive reimbursement from defendant-employer for the cost of Dr. Gersh's IME, and I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement in any amount under rule 876 IAC 4.33 for the cost of Dr. Gersh's IME report.

I affirm the deputy commissioner's order that defendant-employer pay claimant's costs of the arbitration proceeding in the amount of $702.18.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the issues raised in both files.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 28, 2019, is affirmed in its entirety.

File No. 5060445 - Date of Injury: May 18, 2015:

All weekly benefits shall be paid at the stipulated rate of three hundred seventy-eight and 55/100 dollars ($378.55).

Defendant-employer shall pay claimant twelve point five (12.5) weeks of permanent partial disability benefits commencing on the stipulated commencement date of May 19, 2015.

Defendant-employer shall receive credit for all benefits paid to date.

Defendant-employer shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 Technology, File No. 5054686 (App. Apr. 24, 2018).

File No. 5060444 - Date of Injury: March 13, 2017 and Second Injury Fund First Date of Injury: May 18, 2015:

All weekly benefits shall be paid at the stipulated rate of four hundred twenty-seven and 01/100 dollars ($427.01).

Defendant-employer shall pay claimant fifteen (15) weeks of permanent partial disability benefits commencing on the stipulated commencement date of March 14, 2017.

Defendant-employer shall receive credit for all benefits paid to date.

Defendant-employer shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant Second Injury Fund of Iowa, shall pay claimant two hundred twenty-seven point five (272.5) weeks of permanent partial disability benefits commencing upon the expiration of defendant-employer's obligation to pay benefits for the second injury.

Interest will accrue on unpaid Fund benefits from the date of this appeal decision 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 this decision, plus two (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

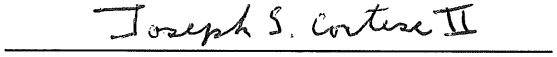
For Both Files:

Defendant-employer shall reimburse claimant for the cost of Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, defendant-employer shall pay claimant's costs of the arbitration proceeding in the amount of seven hundred two and 18/100 dollars ($702.18), and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant-employer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 30th day of April, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Matthew Milligan	Via WCES
Jason P. Wiltfang	Via WCES
Tonya A. Oetken	Via WCES