

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY GELLES,

Claimant,

vs.

BIOSOLIDS MANAGEMENT GROUP,

Employer,

and

AUTO-OWNERS INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 5056091

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1804, 2905;
4100; 5-9998

Claimant Timothy Gelles appeals from a review-reopening decision filed on January 28, 2021. Defendants Biosolids Management Group, employer, and its insurer, Auto-Owners Insurance, respond to the appeal. The case was heard on September 28, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 19, 2020.

In the review-reopening decision, the deputy commissioner found claimant failed to carry his burden of proof to establish he sustained a significant physical change in condition causally related to his July 28, 2015, work injury after the arbitration hearing was held in this matter on January 18, 2017. As a result, the deputy commissioner found claimant failed to prove he is entitled to review-reopening, and the deputy commissioner found claimant failed to prove he is entitled to receive additional permanent disability benefits. 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 evaluation (IME) of claimant performed by Jacqueline Stoken, D.O., on February 18, 2020. The deputy commissioner ordered the parties to pay their own costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained a significant physical change in condition causally related to the work injury. Claimant asserts that the deputy commissioner erred in finding claimant failed to prove entitlement to review-reopening and in failing to find

claimant is permanently and totally disabled as a result of the work injury under either the traditional industrial disability analysis or under the odd-lot analysis. Claimant asserts the deputy commissioner erred in failing to order defendants to pay claimant's costs of the review-reopening proceeding.

Defendants assert on appeal that the review-reopening decision should be affirmed in its entirety.

Those portions of the proposed review-reopening 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 review-reopening decision filed on January 28, 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 review-reopening 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 he sustained a significant physical change in condition causally related to the work injury after the arbitration hearing was held in this matter on January 18, 2017. I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to review-reopening, and I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to receive additional permanent disability benefits. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of Dr. Stoken's IME. I affirm the deputy commissioner's order that the parties pay their own costs of the review-reopening proceeding.

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

ORDER

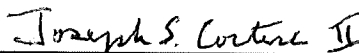
IT IS THEREFORE ORDERED that the review-reopening decision filed in this matter on January 28, 2021, is affirmed in its entirety

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the review-reopening 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 23rd day of June, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

John Dougherty (via WCES)

Matthew R. Phillips (via WCES)