

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MERLIN UTHOFF,

Claimant,

vs.

GENERAL MILLS,

Employer,

and

LIBERTY MUTUAL INSURANCE,

Insurance Carrier,  
Defendants.

**FILED**

APR 10 2017

WORKERS' COMPENSATION

File No. 5039569

A P P E A L

D E C I S I O N

Headnote Nos: 1402.30, 1402.40,  
1402.60, 1701, 1801, 2907

Claimant Merlin Uthoff appeals from an arbitration decision filed on August 19, 2015. Defendants General Mills, the employer, and Liberty Mutual Insurance, the insurer, respond to the appeal. The case was heard on May 15, 2015, and was considered fully submitted in front of the deputy workers' compensation commissioner on June 15, 2015. On February 10, 2017, Joseph S. Cortese II, Iowa Workers' Compensation Commissioner, delegated the authority to the undersigned to issue the final agency decision on the intra-agency appeal currently pending before this agency. The decision in this matter shall be the final agency action.

In the arbitration decision the deputy commissioner found the claimant: (1) failed to carry his burden of proving a causal connection between his March 31, 2011, right knee injury and his later treatment for right knee osteoarthritis, including a partial knee replacement; (2) failed to carry his burden of proving a causal connection between his March 31, 2011, work injury and his right hip condition; (3) failed to prove he sustained any permanent disability as a result of the March 31, 2011, work injury; (4) is not entitled to temporary disability or healing period benefits from July 16, 2012, to July 14, 2014, because the claimant reached maximum medical improvement in November 2011, and the claimed temporary period of disability is related to the claimant's pre-existing right knee osteoarthritis and not his March 31, 2011, work injury; (5) failed to prove the claimed medical expenses are causally related to the March 31, 2011, work injury; and (6) failed to carry his burden of proving a causal connection between any noise exposure he experienced at General Mills and his hearing loss. The deputy commissioner awarded the claimant the \$2,780.00 cost of Robin Sassman, M.D.'s August 2014 independent medical evaluation under Iowa Code section 85.39, but declined to award the cost of Dr. Sassman's second report under Iowa Code section 85.39, declined to award the audiological evaluation fee under Iowa Code section 85.39

because the exam was not performed by a physician, but by an audiologist, and found each party should bear its own costs.

Claimant has not appealed the deputy commissioner's findings regarding the claimant's hearing loss claim. Claimant asserts on appeal the deputy commissioner erred in finding the claimant: (1) failed to carry his burden of proving a causal connection between his March 31, 2011, right knee injury and his later treatment for right knee osteoarthritis, including a partial knee replacement; (2) failed to carry his burden of proving a causal connection between his March 31, 2011, work injury and his right hip condition; (3) failed to prove he sustained any permanent disability as a result of the March 31, 2011, work injury; (4) is not entitled to temporary disability or healing period benefits from July 16, 2012, to July 14, 2014; and (5) failed to prove the claimed medical expenses are causally related to the March 31, 2011, work injury. The claimant further asserts if the above findings are reversed, the commissioner should find the claimant is permanently and totally disabled as a result of his right knee and right hip conditions, and the defendants should not be given a credit for any short-term disability payments.

Defendants assert the decision should be affirmed in its entirety. Alternatively, the defendants assert if the commissioner finds the claimant has established a causal connection between his work activities and his right knee and right hip conditions, the claimant has not proven he is permanently and totally disabled, and the defendants are entitled to a credit for short-term disability payments paid to the claimant.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on August 19, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact, rationale, and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding the claimant failed to carry his burden of proving a causal connection between his March 31, 2011, right knee injury and his later treatment for right knee osteoarthritis, including a partial knee replacement. I affirm the deputy commissioner's finding the claimant failed to carry his burden of proving a causal connection between his March 31, 2011, work injury and his right hip condition. I affirm the deputy commissioner's finding the claimant failed to prove he sustained any permanent disability as a result of the March 31, 2011, work injury. I affirm the deputy commissioner's finding the claimant

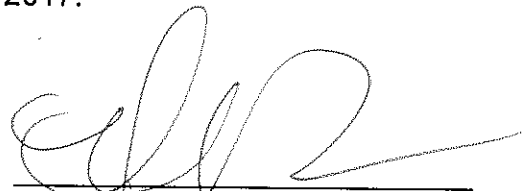
is not entitled to temporary disability or healing period benefits from July 16, 2012, to July 14, 2014, because the claimant reached maximum medical improvement in November 2011 and the claimed temporary period of disability is related to the claimant's pre-existing right knee osteoarthritis and not his March 31, 2011, work injury. I affirm the deputy commissioner's finding the claimant failed to prove the claimed medical expenses are causally related to the March 31, 2011, work injury. I affirm the deputy commissioner's finding Dr. Sassman's second report should not be assessed to the defendants under Iowa Code section 85.39. I affirm the deputy commissioner's finding each party should bear its own costs. I affirm the deputy commissioner's findings, conclusions, and analysis regarding those issues.

ORDER

THEREFORE, IT IS ORDERED: The arbitration decision of August 19, 2015, is AFFIRMED in its entirety.

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 10<sup>th</sup> day of April, 2017.



HEATHER A. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Emily Anderson  
Attorney at Law  
425 - 2<sup>nd</sup> St. SE, Ste. 1140  
Cedar Rapids, IA 52401  
[eanderson@fightingforfairness.com](mailto:eanderson@fightingforfairness.com)

Peter J. Thill  
Brandon W. Lobberecht  
Attorneys at Law  
111 E. Third St., Ste. 600  
Davenport, IA 52801-1596  
[pjt@bettylawfirm.com](mailto:pjt@bettylawfirm.com)  
[bwl@bettylawfirm.com](mailto:bwl@bettylawfirm.com)