

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VICTOR TRISTAN,

Claimant,

vs.

MILLWRIGHT SERVICE, INC.,

Employer,

and

CINCINNATI CASUALTY COMPANY,

Insurance Carrier,  
Defendants.

File No. 5064592

A P P E A L

D E C I S I O N

Headnotes: 1402.30; 1801; 1803; 2501;  
2800; 2907; 5-9998

Claimant Victor Tristan appeals from an arbitration decision filed on October 29, 2019. Defendants Millwright Service, Inc., employer, and its insurer, Cincinnati Casualty Company, respond to the appeal. The case was heard on August 29, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 19, 2019.

The deputy commissioner found claimant was not credible. As a result, the deputy commissioner found claimant failed to satisfy his burden of proof to establish he sustained an injury that arose out of and in the course of his employment as alleged. The deputy commissioner found all other issues raised in this matter are moot, including whether claimant is entitled to receive temporary disability benefits, permanent disability benefits, and medical benefits, and whether claimant's claim is barred pursuant to Iowa Code section 85.23 for failure to provide timely notice of the alleged injury. Because the deputy commissioner found claimant was not successful in proving the merits of his claim, the deputy commissioner declined to award claimant any costs.

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove he sustained a work-related injury. Claimant specifically asserts it should be found he is credible. Because he alleges he sustained a work-related injury, claimant asserts it should be found he is entitled to receive temporary and permanent disability benefits, along with reimbursement for past medical care for the alleged work injury. Claimant additionally asserts defendants' notice defense must fail.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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 October 29, 2019, 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 arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed the credibility of claimant. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings. To the contrary, I find the deputy commissioner provided a well-reasoned analysis as to why she found claimant not to be credible.

Because I affirm the deputy commissioner's finding that claimant was not credible, I likewise affirm the deputy commissioner's finding that claimant failed to prove he sustained a work-related injury as alleged. As a result, the issues of notice and claimant's entitlement to benefits are moot.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 29, 2019, 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 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 1<sup>st</sup> day of July, 2020.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Andrew Bribriescio (via WCES)

J. Richard Johnson (via WCES)