

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NAIMA CERWICK,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5047247

A P P E A L

D E C I S I O N

Head Note Nos: 1108, 1402.40, 1803

FILED

MAY 23 2017

WORKERS' COMPENSATION

Claimant Naima Cerwick appeals from an arbitration decision filed on September 10, 2015. Defendant Tyson Fresh Meats, Inc., self-insured employer, responds to the appeal. The case was heard on February 24, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 1, 2015.

The deputy commissioner found claimant failed to carry her burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant on February 28, 2013, resulted in any temporary or permanent disability. The deputy commissioner awarded claimant nothing. The deputy commissioner found claimant is not entitled to payment by defendant for requested past medical expenses, including medical mileage. The deputy commissioner found claimant is not entitled to payment by defendant for ongoing medical treatment. The deputy commissioner found claimant is not entitled to reimbursement for the cost of the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on October 10, 2014. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that the stipulated work injury resulted in any temporary or permanent disability. Claimant asserts the deputy commissioner erred in failing to award claimant temporary disability benefits and in failing to award claimant permanent disability benefits. Claimant asserts the deputy commissioner erred in failing to award claimant payment by defendant for requested past medical expenses, including medical mileage. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendant for ongoing medical treatment. Claimant also asserts the deputy commissioner erred in failing to order defendant to pay claimant's requested costs of the arbitration proceeding.

Defendant 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.

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 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 10, 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 and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that the stipulated work injury resulted in any temporary or permanent disability. I affirm the deputy commissioner's finding that claimant is entitled to no temporary disability benefits and no permanent disability benefits. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendant for requested past medical expenses, including medical mileage. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendant for ongoing medical treatment. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement for the cost of Dr. Bansal's IME. I also affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing.

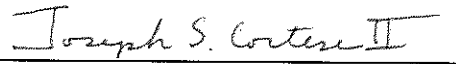
ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 10, 2015, 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.

Signed and filed this 23rd day of May, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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