

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH ROWE,

Claimant,

vs.

TRI-CITY ELECTRIC COMPANY OF
IOWA,

Employer,

and

ILLINOIS NATIONAL INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5055464

APPEAL
DECISION

Head Note Nos: 1402.30; 1108.50; 5-9999

FILED
MAR 22 2019
WORKERS' COMPENSATION

Claimant Kenneth Rowe appeals from an arbitration decision filed on November 16, 2017. Defendants Tri-City Electric Company of Iowa, employer, and its insurer, Illinois National Insurance Company, respond to the appeal. The case was heard on June 28, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 31, 2017.

In the arbitration decision, the deputy commissioner determined the causation opinion of Robin Sassman, M.D., claimant's expert, was based on an incorrect history provided by claimant. As a result, the deputy commissioner found Dr. Sassman's opinion to be unconvincing. The deputy commissioner instead found the causation opinion of Theron Jameson, D.O., defendants' expert, to be more persuasive. Dr. Jameson ultimately opined claimant's work for defendant-employer did not cause or exacerbate claimant's right shoulder condition. For these reasons, the deputy commissioner concluded claimant failed to carry his burden to prove his right shoulder condition and resulting surgery arose out of and in the course of his employment with defendant-employer. The deputy commissioner awarded claimant nothing and ordered the parties to pay their own costs of the arbitration proceeding.

On appeal, claimant asserts the deputy commissioner erred in finding claimant did not sustain a work-related injury to his right shoulder. Claimant asserts the deputy commissioner erred in failing to find claimant is permanently and totally disabled by the alleged work-related right shoulder injury.

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 November 16, 2017, that relate to the issues properly raised on intra-agency appeal. I provide the following additional analysis for my decision:

I affirm the deputy commissioner's finding that Dr. Sassman's causation opinion was based on an incorrect history provided by claimant. Dr. Sassman stated in her report that claimant "did not have any limiting symptoms with regard to pain prior to this incident" and it was not until his work with defendant-employer that "he began to notice pain in the right shoulder." (Exhibit 3, p. 19) As correctly noted by the deputy commissioner, however, claimant reported pain in his shoulders dating back to 1995.

On appeal, claimant argues Dr. Sassman clearly understood he had shoulder pain prior to his date of injury, but she was explaining that when he started with defendant-employer he was not having any such pain. While it is possible that is what Dr. Sassman meant, it is not what Dr. Sassman stated in her report or supplemental responses to claimant's attorney. I therefore affirm the deputy commissioner's finding that Dr. Sassman's causation opinion is not convincing.

I affirm the deputy commissioner's finding that Dr. Jameson's causation opinions are more persuasive than those offered by Dr. Sassman. Dr. Jameson opined claimant's right shoulder condition and need for surgery were not caused, or exacerbated by, claimant's work activities with defendant-employer. (See Defendants' Ex. A, p. 7)

On appeal, claimant argues Dr. Jameson failed to address whether claimant's work activities with defendant-employer qualified as a substantial aggravation of a pre-existing condition, but Dr. Jameson clearly addresses that issue in his May 15, 2017, report. (See Def. Ex. A, p. 7 ("This is not a situation where his work duties with [defendant-employer] ultimately 'broke the straw of the camel's back' necessitating a reverse total shoulder replacement."))

Claimant also argues on appeal that the deputy commissioner failed to address the causation opinions of claimant's treating physician, Gregory Drake, D.O. While Dr. Drake indicated he believed claimant sustained an "extension of a pre-existing tear" (see JE 2, p. 72), he never specifically attributed this "extension" to claimant's work activities with defendant-employer. I also acknowledge Dr. Drake stated he planned to seek approval for claimant's right shoulder surgery through workers' compensation, but Dr. Drake was never asked and, therefore, did not provide any opinion as to whether

claimant's work activities caused a material or substantial aggravation of claimant's pre-existing shoulder condition. Thus, I find the records from Dr. Drake are indeterminate with respect to causation. Nothing in Dr. Drake's records causes me to modify or reverse the deputy commissioner's findings, conclusion, or analysis regarding causation.

For those reasons, I affirm the deputy commissioner's finding that claimant failed to carry his burden to prove that his pre-existing shoulder condition was aggravated by his work activities with defendant-employer. I likewise affirm the deputy commissioner's finding that claimant failed to carry his burden to prove his shoulder condition and subsequent surgery arose out of and in the course of his employment.

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 all of those issues.

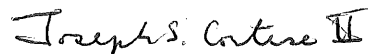
ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 16, 2017, 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 on this 22nd day of March, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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