

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NAZARETH HOWARD,

Claimant,

vs.

PRESTAGE FOODS OF IOWA, LLC,

Employer,

and

SAFETY NATIONAL CASUALTY CORP.,

Insurance Carrier,
Defendants.

File No. 1665279.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1703; 1801; 1803;
1803.1; 2501; 2502; 2701;
2907; 3002; 5-9998

Claimant Nazareth Howard appeals from an arbitration decision filed on April 14, 2021. Defendants Prestage Foods of Iowa, LLC, employer, and its insurer, Safety National Casualty Corp., cross-appeal. The case was heard on January 20, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 15, 2021.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained a permanent right shoulder injury as a result of the stipulated May 1, 2019, work injury. The deputy commissioner found claimant failed to prove he sustained an injury to his neck as a result of the work injury. The deputy commissioner found claimant failed to prove the work injury extends into claimant's body as a whole and, therefore, the deputy commissioner found claimant failed to prove he is entitled to receive industrial disability benefits for the work injury. Pursuant to Iowa Code section 85.34(2)(n), the deputy commissioner found claimant sustained 17 percent functional permanent scheduled member impairment of the right shoulder, based on the permanent impairment rating of Charles Wenzel, M.D. which entitles claimant to receive 68 weeks of permanent partial disability benefits starting on August 27, 2020. The deputy commissioner found claimant is not entitled to receive any temporary disability benefits after April 2, 2020. The deputy commissioner found claimant's correct weekly benefit rate for the work injury is \$423.22. The deputy commissioner found claimant is not entitled to receive medical treatment for his neck at defendants' expense. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for Dr. Wenzel's independent medical evaluation (IME) of claimant. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$2,891.50.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained a neck injury, and in finding claimant failed to prove he is entitled to receive industrial disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive additional healing period benefits for the alleged neck injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive medical treatment for his neck at defendants' expense.

Defendant asserts on cross-appeal that the deputy commissioner erred in finding claimant sustained 17 percent permanent disability of the right shoulder. Defendants assert the award for permanent disability should be reduced to 13 percent impairment of the right shoulder based on the impairment rating of Kyle Galles, M.D.

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 April 14, 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 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 proved he sustained a permanent right shoulder injury as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove he sustained an injury to his neck as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove the work injury extends into claimant's body as a whole, and I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to receive industrial disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant sustained 17 percent disability of the right shoulder from the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive any temporary disability benefits after April 2, 2020. I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the work injury is \$423.22. I affirm the deputy commissioner's finding that claimant is not entitled to receive medical treatment for his neck at defendants' expense. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for Dr. Wenzel's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$2,891.50.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed in this matter on April 14, 2021, is affirmed in its entirety

Defendants shall pay claimant sixty-eight (68) weeks of permanent partial disability benefits commencing on August 27, 2020, at the weekly rate of four hundred twenty-three dollars and 22/100 (\$423.22).

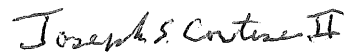
Pursuant to the stipulation of the parties, defendants shall receive a credit against the award for their overpayment of benefits.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two thousand eight hundred ninety-one and 50/100 dollars (\$2,891.50), and the parties shall split the costs of the appeal, including the cost of the hearing transcript

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 24th day of August, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Robert Gainer (via WCES)

Jennifer Clendenin (via WCES)