

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PHILIP ONDLER,

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE CO. OF
NORTH AMERICA,

Insurance Carrier,
Defendants.

FILED

APR 11 2018

WORKERS' COMPENSATION

File No. 5052607

A P P E A L

D E C I S I O N

Head Note No: 1100

Claimant Philip Ondler appeals from an arbitration decision filed on November 14, 2016. Defendants Quaker Oats Company, employer, and its insurer, Indemnity Insurance Company of North America, respond to the appeal. The case was heard on June 9, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 30, 2016.

The deputy commissioner found claimant failed to carry his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer on February 1, 2015, which resulted in hearing loss and tinnitus. Because the deputy commissioner found claimant failed to carry his burden of proof on the issues of causation and compensability regarding claimant's alleged injury, the deputy commissioner found claimant failed to prove entitlement to permanent disability benefits. Because the deputy commissioner found claimant failed to carry his burden of proof on the issues of causation and compensability, the deputy commissioner found defendants' Iowa Code section 85.23 90-day notice defense is moot. The deputy commissioner found claimant is entitled to reimbursement from defendants in the amount of \$29.95 for mileage incurred by claimant in traveling to the evaluation performed by Marlan Hansen, M.D. on January 23, 2014. The deputy commissioner noted defendants stipulated at the hearing they would reimburse claimant in the amount of \$1,303.50 for the cost of the independent medical evaluation (IME) performed by Richard Tyler, Ph.D., on January 30, 2015, if that payment had not already been made. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$167.98.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained a work-related injury on February 1, 2015, as alleged. Claimant asserts the deputy commissioner erred in finding claimant failed to prove entitlement to permanent disability benefits.

Defendants assert 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.

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 14, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of all 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 his burden of proof that he sustained a work-related injury on February 1, 2015, as alleged. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to permanent disability benefits. I affirm the deputy commissioner's finding that defendants' Iowa Code section 85.23 90-day notice defense is moot. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants in the amount of \$29.95 for mileage incurred by claimant in traveling to Dr. Hansen's evaluation on January 23, 2014. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$167.98. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 14, 2016, is affirmed in its entirety.

Claimant shall take nothing from these proceedings in the way of indemnity benefits.

Defendants shall reimburse claimant in the amount of \$29.95 for mileage incurred by claimant in traveling to Dr. Hansen's evaluation on January 23, 2014.

Pursuant to defendants' stipulation at hearing, they shall reimburse claimant in the amount of \$1,303.50 for the cost of Dr. Tyler's IME if that payment has not already been made.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$167.98, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed on this 11th day of April, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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