

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICK MULLALEY,

Claimant,

vs.

LYONDELL CHEMICAL COMPANY,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5058827

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30; 2206; 2209;
2401; 3202; 5-9998

Claimant Patrick Mullaley appeals from an arbitration decision filed on November 29, 2018. Defendants Lyondell Chemical Company, employer, and its insurer, Ace American Insurance Company, and defendant Second Injury Fund of Iowa (the Fund), respond to the appeal. The case was heard on June 18, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 8, 2018.

The deputy commissioner found claimant failed to carry his burden of proof to establish he sustained an injury that arose out of and in the course of his employment with defendant-employer on or about November 12, 2015. The deputy commissioner found claimant failed to prove his pre-existing right wrist condition was caused by, or was materially aggravated by, or was materially accelerated by, his employment with defendant-employer. The deputy commissioner also found claimant is barred from any recovery in this matter because the deputy commissioner found defendants employer and insurer carried their burden of proof to establish their affirmative defense that claimant failed to provide defendants employer and insurer with notice of the alleged work injury within 90 days after it allegedly occurred. The deputy commissioner found claimant, as a reasonable person either was, or should have been, aware of the seriousness and potential compensability of the alleged injury no later than September 13, 2016, but did not provide defendants employer and insurer with notice of the alleged

injury until April of 2017, which was significantly more than 90 days. Because the deputy commissioner found claimant failed to prove causation and compensability and because the deputy commissioner found this claim is barred by the 90-day notice defense of defendants employer and insurer, the deputy commissioner found all other issues raised in this matter, including claimant's potential entitlement to benefits from the Fund, are moot. The deputy commissioner awarded claimant nothing for the alleged work injury. 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 prove he sustained a work-related injury to his right wrist. Claimant asserts the deputy commissioner erred in finding defendants employer and insurer carried their burden of proof to establish claimant failed to provide notice of the alleged work injury within 90 days after the injury allegedly occurred. Claimant asserts the deputy commissioner erred in finding all other issues raised in this matter are moot, and in awarding claimant nothing for the alleged work injury.

Defendants employer and insurer and the Fund 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 29, 2018, 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 failed to carry his burden of proof to establish he sustained a work-related injury in this matter. I affirm the deputy commissioner's finding that claimant failed to prove his pre-existing right wrist condition was caused by, or was materially aggravated by, or was materially accelerated by, his employment with defendant-employer. I affirm the deputy commissioner's finding that claimant is barred from any recovery in this matter because I affirm the deputy commissioner's finding that defendants employer and insurer carried their burden of proof to establish their affirmative defense that claimant failed to provide defendants with notice of the alleged work injury within 90 days after it allegedly occurred. I affirm the deputy commissioner's finding that all other issues raised in this matter, including claimant's potential entitlement to benefits from the Fund, are moot. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing for the alleged work-

related injury. I 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.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 29, 2018, 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 employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 29th day of January, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Dirk Hamel Via WCES

Charles E. Cutler Via WCES

John Cutler Via WCES

Tonya A. Oetken Via WCES