

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID J. WALSH,  
Claimant,

vs.

BIRD CHEVROLET COMPANY,  
Employer,

and

OWNERS INSURANCE COMPANY,  
Insurance Carrier,  
Defendants.

File No. 5056759

A P P E A L  
D E C I S I O N

Head Note No: 1402.30

**FILED**  
**APR 12 2019**  
WORKERS' COMPENSATION

Claimant David J. Walsh appeals from an arbitration decision filed on November 13, 2017, and from a ruling on application for rehearing filed on November 27, 2017. Defendants Bird Chevrolet Company, employer, and its insurer, Owners Insurance Company, respond to the appeal. The case was heard on June 14, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 14, 2017.

The deputy commissioner found claimant failed to carry his burden of proof that he sustained occupational hearing loss and tinnitus which arose out of and in the course of claimant's employment with defendant-employer with an injury date of April 3, 2015. The deputy commissioner found all other issues raised in this matter are moot and awarded claimant nothing. The deputy commissioner found "claimant's testimony is not entirely credible." (Arbitration Decision, page 7) 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 his burden of proof that he sustained work-related hearing loss and tinnitus. Claimant asserts the deputy commissioner erred in finding all other issues raised in this matter are moot and in awarding claimant nothing. Claimant asserts the deputy commissioner erred in finding "claimant's testimony is not entirely credible." Claimant asserts the deputy commissioner erred in admitting defendants' Exhibit C into

evidence. Claimant asserts the deputy commissioner erred in failing to tax claimant's costs of the arbitration proceeding against defendants.

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 13, 2017, and the ruling on application for rehearing filed on November 27, 2017, 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 that he sustained work-related hearing loss and tinnitus. I affirm the deputy commissioner's finding that all other issues raised in this matter are moot. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing. I affirm the deputy commissioner's determination to admit defendants' Exhibit C into evidence. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

With respect to claimant's credibility, while I performed a de novo review of the record, I give considerable deference to the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed claimant's credibility in this matter. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's finding that "claimant's testimony is not entirely credible."

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

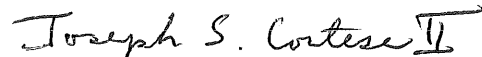
#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 13, 2017, and the ruling on application for rehearing filed on November 27, 2017, are affirmed in their 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 defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed on this 12<sup>th</sup> day of April, 2019.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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