

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAVIER CALDERON,
Claimant,

vs.

TYSON FRESH MEATS, INC.,
Employer,
Self-Insured,
Defendant.

File Nos. 5051782, 5056141

A P P E A L

D E C I S I O N

Head Note Nos: 1108.50; 1402.60; 1803;
2501; 2502; 2602; 5-9998

FILED
JUL 30 2018
WORKERS' COMPENSATION

Claimant Javier Calderon appeals from an arbitration decision filed on February 22, 2017. Defendant Tyson Fresh Meats, Inc., self-insured employer, cross-appeals. The case was heard on November 2, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 23, 2016.

In File No. 5051782, 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 on March 27, 2014, as alleged. 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 and medical benefits. The deputy commissioner found claimant is entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on November 21, 2014. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5056141, the deputy commissioner found claimant failed to carry his burden of proof that he sustained permanent disability as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant on October 12, 2015, as alleged. The deputy commissioner found claimant failed to prove entitlement to permanent disability benefits and the requested past medical expenses itemized in Exhibit 17. The deputy commissioner found claimant is entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of the IME performed by Dr. Bansal on January 22, 2016. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5051782, 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 March 27, 2014, as alleged. Claimant asserts the deputy commissioner erred in finding claimant failed to prove entitlement to permanent disability benefits and medical benefits. Claimant asserts the deputy commissioner erred in failing to order defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5051782, defendant asserts on appeal that the deputy commissioner erred in finding claimant is entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of Dr. Bansal's November 21, 2014, IME.

In File No. 5056141, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained permanent disability as a result of the stipulated October 12, 2015, work injury as alleged. Claimant asserts the deputy commissioner erred in finding claimant failed to prove entitlement to permanent disability benefits and the requested past medical expenses itemized in Exhibit 17. Claimant asserts the deputy commissioner erred in failing to order defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5056141, defendant asserts 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 February 23, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding.

In File No. 5051782, I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained a work-related injury on March 27, 2014, as alleged. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to permanent disability benefits and medical benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of Dr. Bansal's November 21, 2014, IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

In File No. 5056141, I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained permanent disability as a result of the stipulated October 12, 2015, work injury as alleged. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to permanent disability benefits and the requested past medical expenses itemized in Exhibit 17. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of Dr. Bansal's January 22, 2016, IME. 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 all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 23, 2017, is affirmed in its entirety.

Regarding File No. 5051782, alleged injury date of March 27, 2014:

Claimant shall take no weekly benefits from these proceedings.

Defendant shall reimburse claimant for Dr. Bansal's fee in the amount of two thousand four hundred ninety-five and no/100 dollars (\$2,495.00) for his November 21, 2014, IME.

Pursuant to rule 876 IAC 4.33, the parties shall bear their own costs of the arbitration proceeding, and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Regarding File No. 5056141, injury date of October 12, 2015:

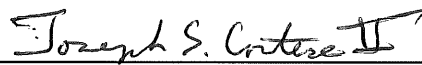
Claimant shall take no weekly benefits from these proceedings.

Defendant shall reimburse claimant for Dr. Bansal's fee in the amount of two thousand three hundred fifty and no/100 dollars (\$2,350.00) for his January 22, 2016, IME.

Pursuant to rule 876 IAC 4.33, the parties shall bear their own costs of the arbitration proceeding, 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 30th day of July, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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