

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLIFFORD S. ALLEN,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5049025

A P P E A L

D E C I S I O N

Head Note Nos.: 1803, 4000.2

FILED

JUL 5 2016

WORKERS' COMPENSATION

Claimant Clifford S. Allen appeals from an arbitration decision filed on January 23, 2015. Defendant Tyson Fresh Meats, Inc., self-insured employer, responds to the appeal. The case was heard on April 29, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 23, 2014.

The deputy commissioner found claimant carried his burden of proof that he sustained permanent disability to both his low back and his right knee resulting from an injury which occurred on November 9, 2011, which arose out of and in the course of his employment with defendant-employer, which entitles claimant to industrial disability benefits. The deputy commissioner awarded claimant ten percent industrial disability, which entitles claimant to 50 weeks of permanent partial disability (PPD) benefits commencing on November 10, 2011. The deputy commissioner also found claimant cannot recover penalty benefits in this matter pursuant to Iowa Code section 86.13(4) because claimant failed to plead entitlement to penalty benefits as required by Iowa Administrative Rule 876-4.2, because no motion to bifurcate the penalty claim was made, and because defendant did not consent to the issue of penalty benefits as an issue to be considered in the arbitration hearing. The deputy commissioner also awarded claimant's costs.

Claimant asserts on appeal that the deputy commissioner erred in awarding claimant only ten percent industrial disability. Claimant asserts he is entitled to substantially more than ten percent industrial disability. Claimant also asserts the deputy commissioner erred in failing to award penalty benefits.

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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 January 23, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 carried his burden of proof that he sustained permanent disability to both his low back and his right knee resulting from the injury which occurred on November 9, 2011, which arose out of and in the course of his employment with defendant-employer, which entitles claimant to industrial disability benefits. I affirm the deputy commissioner's award of ten percent industrial disability, which entitles claimant to 50 weeks of PPD benefits commencing on November 10, 2011. I affirm the deputy commissioner's finding that claimant cannot recover penalty benefits in this matter pursuant to Iowa Code section 86.13(4) because claimant failed to plead entitlement to penalty benefits as required by Iowa Administrative Rule 876-4.2, because no motion to bifurcate the penalty claim was made, and because defendant did not consent to the issue of penalty benefits as an issue to be considered in the arbitration hearing. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of January 23, 2015, is affirmed in its entirety.

Defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits at the weekly rate of five-hundred fifty-seven and 14/100 dollars (\$557.14) commencing on November 10, 2011.

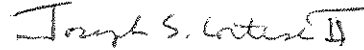
Defendant shall pay accrued benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits as set forth in Iowa Code section 85.30.

Defendant shall file subsequent reports of injury as required under rule 876 IAC 3.1(2).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 5th day of July, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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