

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RON M. DAVIS,  
Claimant,

vs.

BED ROCK, INC., d/b/a WILCOX  
TRUCKING,

Employer,

and

NEW HAMPSHIRE INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

File No. 5054446

APPEAL  
DECISION

Head Note Nos: 1106; 1402.40; 5-9998

**FILED**  
APR 30 2019  
WORKERS' COMPENSATION

Claimant Ron Davis appeals from an arbitration decision filed on January 9, 2018. Defendants Bed Rock, Inc., d/b/a Wilcox Trucking, employer, and its insurer, New Hampshire Insurance Company, respond to the appeal. The case was heard on September 27, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 18, 2017.

The deputy commissioner found claimant failed to carry his burden of proof that he sustained an injury as a result of the work incident which occurred on July 17, 2015, and claimant was therefore awarded nothing.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to show he sustained an injury to his left shoulder as a result of the work incident. Claimant asserts he is entitled to receive healing period benefits for the period of July 17, 2015, to December 27, 2016, industrial disability benefits, and medical reimbursement.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. 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 9, 2018, which relate to the issues properly raised on intra-agency appeal, with the following additional analysis regarding claimant's argument that he sustained an injury as a result of the work incident:

Claimant's job involved driving a semi-truck and hauling loads between Des Moines and Omaha. (Hearing Transcript p. 25) The work incident which claimant alleges caused his left shoulder injury involved a confrontation claimant had with a co-worker.

Each work day claimant would receive paperwork from defendant-employer which corresponded to a particular trailer for him to hook up to and haul to Omaha. On July 17, 2015, claimant was unable to locate the correct paperwork and he believed a co-worker had taken it. (Tr. pp. 28-29) Claimant approached the co-worker to retrieve the paperwork and a disagreement followed which resulted in claimant contacting the police. Two officers arrived on scene and documented the incident via their body cameras. When claimant spoke to the police, he denied sustaining any injury and he can be seen in the police videos raising both arms above shoulder height, using his hands and arms freely to pull himself into and out of the semi-truck with no hesitation or observable issues. Claimant voiced no concern whatsoever about any shoulder pain, injury or problems of any kind. (See Exhibit E)

I affirm the deputy commissioner's finding that claimant's "uneven testimony" at hearing, in which he claimed specific recollection of certain events and then "retreated to an excuse of 'blinking out'" and having no recollection of the events, rendered claimant's testimony not credible. (Arbitration Decision .p. 7)

As a result of claimant's faulty memory at hearing, his primary argument on appeal is that the commissioner should rely on the contemporaneous records to find he sustained a left shoulder injury. However, review of those records as detailed in the arbitration decision reveals claimant's rendition of the facts of the event evolved over time. Further, the most contemporaneous record, which is the police body cam videos, created moments after the event, include, in claimant's own words, his specific denial of any injury and no discussion whatsoever of the mechanism of injury later relied upon by Sunil Bansal, M.D., claimant's IME physician, to find a causal relationship.

I affirm the deputy commissioner's finding that the "only consistent thread is that claimant's paperwork was taken by another co-worker. This angered the claimant. He confronted the co-worker. The police were called. Claimant denied injury and the parties were released." (Arb. Dec. p. 7)

The full measure of the description of events which claimant provided at hearing does not appear anywhere in the records until his IME with Dr. Bansal, which occurred on May 12, 2017, nearly two years after the incident. The varying descriptions given between July 17, 2015, and May 12, 2017, include: claimant asserting no injury at all immediately after the incident (Ex. E); to having his arm pulled by the co-worker (Ex. G, p. 1); to being pushed to the ground by the co-worker (Jt. Ex. 3, p. 22); to hanging from the steering wheel of the semi-truck by his left arm (Jt. Ex. 8, pp. 7-8); and, finally denying any recollection of having his arm jerked and having immediate pain in his left shoulder because he "blanked out" (Tr. p. 52).

Considering the following:

1. Claimant's non-credible hearing testimony;
2. The varying descriptions in the medical records of the mechanism of injury;
3. The opinion of the treating orthopedic surgeon, Timothy Vinyard, M. D., who opined claimant's shoulder condition was not likely caused or materially aggravated by the incident on July 17, 2015 (Jt. Ex. 7, pp. 46, 49-50);
4. Claimant's denial of any injury to the investigating police officers (Ex. E);
5. Claimant's pre-existing shoulder injury and condition (Jt. Ex. 7, pp. 46-47),

I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained any injury as a result of the July 17, 2015, work incident.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

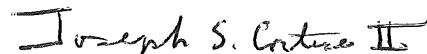
ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 9, 2018, is affirmed in its entirety with my additional analysis as set forth above.

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.

Signed and filed on this 30<sup>th</sup> day of April, 2019.



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WORKERS' COMPENSATION  
COMMISSIONER

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