

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GUILLERMO ORTIZ,

Claimant,

vs.

JBS USA, LLC,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

JAN 12 2018

WORKERS' COMPENSATION

File No. 5049541

A P P E A L

D E C I S I O N

Head Note Nos: 1804; 2500; 2907;
4000; 5-9998

Defendants JBS USA, LLC, employer, and its insurer, Zurich American Insurance Company, appeal from an arbitration decision filed on June 2, 2016. Claimant Guillermo Ortiz cross-appeals. The case was heard on February 24, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 25, 2016.

The deputy commissioner found claimant sustained permanent total disability from the physical injuries sustained as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on November 29, 2012. The deputy commissioner also found claimant sustained a sequela mental injury as a result of the work injury, but the deputy commissioner found claimant is not entitled to any compensation for the mental injury. The deputy commissioner found claimant is entitled to permanent total disability benefits commencing on the November 29, 2012, date of injury using both the traditional industrial disability analysis and using the odd-lot analysis. The deputy commissioner found claimant is not entitled to penalty benefits for unreasonable delay or denial of weekly benefits. The deputy commissioner found claimant is entitled to reimbursement from defendants for the cost of an independent medical evaluation (IME) performed by Sunil Bansal, M.D., on October 9, 2015. The deputy commissioner found claimant is not entitled to reimbursement by defendants for the cost of a functional capacity evaluation (FCE) performed by Tim Vander Wilt, PT, on June 9, 2015. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$333.11.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained permanent total disability as a result of the November 29, 2012, work injury and in awarding claimant permanent total disability benefits commencing on the date of injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to permanent total disability benefits by using either the traditional industrial disability analysis or by using the odd-lot analysis. Defendants assert the deputy commissioner erred in finding claimant sustained a sequela mental injury as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to anything more for the work injury than minimal industrial disability. Defendants assert the deputy commissioner erred in failing to find claimant reached maximum medical improvement on November 1, 2013, and in failing to find claimant's symptoms after that date are unrelated to the work injury.

Claimant asserts on cross-appeal that the award of permanent total disability should be affirmed. Claimant asserts the deputy commissioner erred in finding claimant's sequela mental injury resulting from the work injury is not compensable. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to penalty benefits for unreasonable delay or denial of weekly benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement by defendants for the cost of Mr. Vander Wilt's FCE.

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 June 2, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis 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 sustained permanent total disability as a result of the November 29, 2012, work injury and I affirm the deputy commissioner's award of permanent total disability benefits commencing on the date of injury. I affirm the deputy commissioner's finding that claimant is entitled to permanent total disability benefits by using both the traditional industrial disability analysis and by using the odd-lot analysis. I affirm the deputy commissioner's finding that claimant sustained a sequela mental injury as a result of the work injury, and I affirm the deputy commissioner's finding that claimant is not entitled to any compensation for the mental injury. I affirm the deputy

commissioner's finding that claimant is not entitled to penalty benefits for unreasonable delay or denial of weekly benefits. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendants for the cost of Mr. Vander Wilt's FCE. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$333.11. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 2, 2016, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits in the amount of six hundred twenty-four and 52/100 dollars (\$624.52) per week from November 29, 2012, and into the future during the period of the claimant's continued disability.

Defendants shall receive a credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall reimburse claimant for the cost of Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$333.11, 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), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed this 12th day of January, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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