

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REYNALDO PENA,

Claimant,

vs.

LECLAIRE MANUFACTURING CO.,

Employer,

and

GREAT AMERICAN ALLIANCE
INSURANCE CO.,Insurance Carrier,
Defendants.

File No. 21015492.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1403.10;
1801; 1803; 2501; 2502; 2701;
2907; 5-9998

Claimant Reynaldo Pena appeals from an arbitration decision filed on October 25, 2022. Defendants LeClaire Manufacturing Co., employer, and its insurer, Great American Alliance Insurance Co., respond to the appeal. The case was heard on July 20, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 2, 2022.

In the arbitration decision, the deputy commissioner found claimant failed to carry his burden of proof to establish he sustained a work-related injury on August 31, 2020, as alleged. Because the deputy commissioner found against claimant on the issues of causation and compensability, the deputy commissioner found the other issues raised in this matter are moot. The deputy commissioner also found that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Richard Kreiter, M.D. 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 prove he sustained a work-related injury as alleged. Claimant asserts the deputy commissioner erred in finding the other issues raised in this matter are moot. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendants for the cost of Dr. Kreiter's IME. Claimant asserts the deputy commissioner erred in ordering the parties to pay their own costs of the arbitration proceeding.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration 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 October 25, 2022, 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. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to 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 was not a credible witness. 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.

I affirm the deputy commissioner's finding that claimant failed to prove he sustained a work-related injury as alleged. Because I affirm the deputy commissioner's finding against claimant on the issues of causation and compensability, I affirm the deputy commissioner's finding that the other issues raised in this matter are moot. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of Dr. Kreiter's 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 the above-stated issues.

ORDER

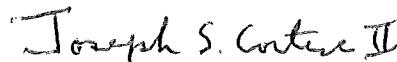
IT IS THEREFORE ORDERED that the arbitration decision filed on October 25, 2022, is affirmed in its entirety.

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 claimant shall pay 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 on this 24th day of March, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Andrew Bribriesco (via WCES)

Lori Scardina Utsinger (via WCES)