

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMIE DAVIS,

Claimant,

vs.

GORDON FOOD SERVICE, INC.,

Employer,

and

STANDARD FIRE INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 1652763.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20, 1403.30,
1601

Claimant Jamie Davis appeals from an arbitration decision filed on November 5, 2021. Defendants Gordon Food Service, Inc., employer, and its insurer, Standard Fire Insurance Company, respond to the appeal. The case was heard on August 2, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 21, 2021.

In the arbitration decision, the deputy commissioner found claimant proved he sustained an injury which arose out of and in the course of his employment with defendant-employer on August 23, 2018. The deputy commissioner found that pursuant to Iowa Code section 85.16(2), defendants carried their burden of proof to establish claimant was intoxicated when the work injury occurred. The deputy commissioner found claimant failed to overcome the section 85.16(2) presumption that claimant's intoxication was a substantial factor in causing the work injury, and the deputy commissioner therefore found all other issues raised in this matter are moot. The deputy commissioner found claimant waived the issue of penalty benefits because claimant did not raise the issue at hearing, and he did not include it on the hearing report. The deputy commissioner found claimant is barred entirely from any recovery in this matter. The deputy commissioner found Iowa Code section 730.5, which pertains to drug testing in the workplace in the State of Iowa, does not apply in workers' compensation cases in Iowa. 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 was intoxicated when the work injury occurred. Claimant asserts the deputy commissioner erred in finding claimant failed to overcome the section 85.16(2) presumption that claimant's intoxication was a substantial factor in causing the work

injury. Claimant asserts the deputy commissioner erred in finding all other issues raised in this matter are moot. Claimant asserts the deputy commissioner erred in finding claimant waived the issue of penalty benefits. Claimant asserts the deputy commissioner erred in finding claimant is barred entirely from any recovery in this matter. Claimant asserts the deputy commissioner erred in finding Iowa Code section 730.5 does not apply in workers' compensation cases in Iowa.

Defendants assert 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 November 5, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned 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 proved he sustained a work-related injury on August 23, 2018. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.16(2), defendants carried their burden of proof to establish claimant was intoxicated when the work injury occurred. I affirm the deputy commissioner's finding that claimant failed to overcome the section 85.16(2) presumption that claimant's intoxication was a substantial factor in causing the work injury. I affirm the deputy commissioner's finding that all other issues raised in this matter are moot. I affirm the deputy commissioner's finding that claimant waived the issue of penalty benefits because claimant did not raise the issue at hearing, and he did not include the issue on the hearing report. I affirm the deputy commissioner's finding that claimant is barred entirely from any recovery in this matter. I affirm the deputy commissioner's finding that Iowa Code section 730.5 does not apply in workers' compensation cases in Iowa. 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 in this matter on November 5, 2021, 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 the costs of the appeal, including the cost of the hearing transcript, shall be paid by claimant.

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 13th day of April, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jacob Oeth (via WCES)

Matthew Sahag (via WCES)

Lori Scardina Utsinger (via WCES)