

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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LEAH K. MCBRIDE,	:	:
Claimant,	:	File No. 5058989
vs.	:	A P P E A L
TYSON FOODS, INC.,	:	D E C I S I O N
Employer,	:	:
Self-Insured,	:	Head Notes: 1402.40; 1803; 1803.1, 2503;
Defendant.	:	2907; 5-9999

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Claimant Leah K. McBride appeals from an arbitration decision filed on October 30, 2018. Defendant Tyson Foods, Inc., self-insured employer, responds to the appeal. The case was heard on October 3, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 24, 2018.

The deputy commissioner found claimant failed to carry her burden of proof to establish that the permanent disability she sustained as a result of the stipulated April 8, 2016, work-related injury extends beyond her left upper extremity into her body as a whole. The deputy commissioner found claimant sustained ten percent permanent scheduled member functional disability of her left upper extremity as a result of the work injury, which entitles claimant to receive 25 weeks of permanent partial disability benefits from defendant commencing on September 29, 2016. The deputy commissioner found claimant is not entitled to reimbursement from defendant for the cost of unauthorized medical treatment claimant obtained from Richard Naylor, D.O. The deputy commissioner found claimant is not entitled to reimbursement from defendant for requested subpoena fees. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof to establish that the permanent disability she sustained as a result of the work injury extends beyond her left upper extremity into her body as a whole. Claimant asserts the deputy commissioner erred in finding claimant sustained ten percent permanent scheduled member functional disability of her left upper extremity as a result of the work injury, and in failing to award claimant substantial industrial disability for the work injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendant for the cost of the

unauthorized medical treatment claimant obtained from Dr. Naylor. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendant for the requested subpoena fees. Claimant's attorney asserts:

Claimant was not afforded a fair hearing due to bias on the part of the hearing officer, Deputy James F. Christenson, in violation of due process of law. The hearing record reveals a very pro-corporate/anti-claimant bias. This is extremely evident in the hearing officer's conduct both on and off the record.

(Claimant's Appeal Brief, p. 1)

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.

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 30, 2018, 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 failed to carry her burden of proof to establish that the permanent disability she sustained as a result of the work injury extends beyond her left upper extremity into her body as a whole. I affirm the deputy commissioner's finding that claimant sustained ten percent permanent scheduled member functional disability of her left upper extremity as a result of the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendant for the cost of the unauthorized medical treatment claimant obtained from Dr. Naylor. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendant for the requested subpoena fees. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding those issues.

With regard to the assertion made by claimant's attorney that the deputy commissioner acted with bias against claimant in this matter, I find there is absolutely no evidence that the deputy commissioner acted with bias, either on the record or outside of the record, and I find claimant's attorney's assertion in that regard was made with reckless disregard for the truth. I hereby admonish claimant's attorney to refrain from making such baseless and reckless assertions in the future before this agency.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 30, 2018, is affirmed in its entirety.

Defendant shall pay claimant twenty-five (25) weeks of permanent partial disability benefits at the rate of four hundred two and 05/100 dollars (\$402.05) per week commencing on September 29, 2016.

Defendant shall receive credit for benefits previously paid.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00) and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 16<sup>th</sup> day of January, 2020.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

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