

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VICENTE LINARES,

Claimant,

vs.

TYSON FRESH MEATS,

Employer,
Self-Insured,
Defendants.

FILED

File No. 5031412

FEB 3 2017

A P P E A L

WORKERS' COMPENSATION

D E C I S I O N

Head Note Nos: 1803, 2905

Claimant Vicente Linares appeals from a review-reopening decision filed on August 28, 2015. Defendant Tyson Fresh Meats responds to the appeal. The case was heard on September 15, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 14, 2014.

The deputy commissioner found claimant is not entitled to review-reopening in this matter because claimant failed to carry his burden of proof that he sustained an economic change of condition resulting in an increased loss of earning capacity following an arbitration decision which was filed in this matter on February 7, 2011, for an injury which occurred on June 3, 2009, which arose out of and in the course of claimant's employment with defendant. In the arbitration decision, which was appealed to the Workers' Compensation Commissioner and which was affirmed, claimant was awarded 40 percent industrial disability benefits, which entitled claimant to 200 weeks of permanent partial disability (PPD) benefits, commencing June 3, 2009. Based on the finding of no economic change of condition in the review-reopening decision, the deputy commissioner awarded claimant nothing. The deputy commissioner also ordered claimant to pay the costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained an economic change of condition resulting in an increased loss of earning capacity. Claimant asserts the deputy commissioner erred in failing to award significant additional industrial disability. Claimant asserts the deputy commissioner also erred in ordering claimant to pay the costs of the review-reopening proceeding.

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.

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 review-reopening decision filed on August 28, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided an excellent and well-reasoned analysis of the issues raised in the review-reopening 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 is not entitled to review-reopening in this matter because claimant failed to carry his burden of proof that he sustained an economic change of condition resulting in an increased loss of earning capacity following the filing of the arbitration decision on February 7, 2011. I affirm the deputy commissioner's finding that claimant is entitled to no additional industrial disability. I also affirm the deputy commissioner's order that claimant pay the costs of the review-reopening proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

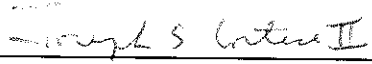
IT IS THEREFORE ORDERED that the review-reopening decision filed on August 28, 2015, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed this 3rd day of February, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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