

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MITIKU GETISO,	:	File No. 20004806.01
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Claimant,	:	A P P E A L
	:	
vs.	:	D E C I S I O N
	:	
TYSON FRESH MEATS,	:	
	:	
Employer,	:	
Self-Insured,	:	Head Notes: 1402.40; 1402.60; 1403.10;
Defendant.	:	1803; 2501; 2701; 2907

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Defendant Tyson Fresh Meats, self-insured employer, appeals from an arbitration decision filed on November 29, 2022. Claimant Mitiku Getiso responds to the appeal. The case was heard on June 9, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 1, 2022.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish he sustained 13 percent functional impairment of his left lower extremity as a result of the stipulated April 21, 2020, work injury, which entitles claimant to receive 28.6 weeks of permanent partial disability benefits, commencing on March 15, 2021. The deputy commissioner found defendant is not responsible for claimant's medical expenses itemized in Exhibit 6 because claimant did not request additional medical treatment from defendant prior to seeking alternate care on his own. The deputy commissioner found claimant is entitled to alternate care with Sioux Falls Foot Specialist, Avera Therapy Health Center, and AMG Neurology Sioux Falls. Pursuant to rule 876 IAC 4.33, the deputy commissioner ordered defendant to reimburse claimant in the amount of \$2,521.00 for the cost of the report from Sunil Bansal, M.D.

On appeal, defendant asserts the deputy commissioner erred in finding claimant sustained 13 percent functional impairment. Defendant asserts the deputy commissioner erred in granting claimant's request for alternate care. Defendant asserts the deputy commissioner erred in ordering defendant to reimburse claimant for the cost of Dr. Bansal's report.

Claimant asserts 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 part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on November 29, 2022, is affirmed in part, and is reversed in part with my additional and substituted analysis.

Without further analysis, I affirm the deputy commissioner's finding that claimant proved he sustained 13 percent functional impairment of his left lower extremity as a result of the work injury. I affirm the deputy commissioner's finding that defendant is not responsible for claimant's medical expenses itemized in Exhibit 6 because claimant did not request additional medical treatment from defendant prior to seeking alternate care on his own. Pursuant to rule 876 IAC 4.33, I affirm the deputy commissioner's order for defendant to reimburse claimant in the amount of \$2,521.00 for the cost of Dr. Bansal's report.

With my additional and substituted analysis, I reverse the deputy commissioner's finding that claimant is entitled to alternate care with Sioux Falls Foot Specialist, Avera Therapy Health Center, and AMG Neurology Sioux Falls.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1) The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. (Id.) "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." (Id.) § 85.27(4) If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. (Id.) If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." (Id.) The statute requires the employer to furnish reasonable medical care. (Id.) § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

The deputy commissioner correctly found defendant is not responsible for claimant's medical expenses itemized in Exhibit 6 because claimant did not request additional medical care from defendant prior to seeking alternate care on his own between September 7, 2021, and March 8, 2022. The deputy commissioner found "[i]t appears defendant's failure to authorize care was based on claimant's own failure to notify defendant of his need for additional treatment." (Arb. Dec. p. 11)

The deputy commissioner found defendant learned claimant had sought additional medical care during his deposition on March 24, 2022, but defendant had not offered any additional medical care to claimant after the deposition but prior to the hearing. The deputy commissioner found defendant's failure to offer any additional care after March 24, 2022, was not reasonable or compliant with Iowa Code section 85.27 and concluded claimant is entitled to alternate care with Sioux Falls Foot Specialist, Avera Therapy Health Center, and AMG Neurology Sioux Falls. I disagree with the deputy commissioner's finding. Claimant did not request additional care from defendant or express dissatisfaction with the care he received from defendant up through the time of the hearing. There was no showing made at hearing that defendant abandoned claimant's care or unreasonably refused to authorize additional care. The deputy commissioner erred in finding claimant is entitled to alternate care with Sioux Falls Foot Specialist, Avera Therapy Health Center, and AMG Neurology Sioux Falls. Defendant remains responsible for all future medical care causally related to claimant's left lower extremity work-related condition and defendant retains the right to choose which providers will provide claimant with that medical care.

The order section of the decision indicates the weekly benefit rate is \$677.32 and \$677.82. Neither party raised this issue on appeal. On the hearing report order the parties stipulated the weekly rate is \$677.82. I find the discrepancy is a scrivener's error and I find claimant's weekly benefit rate is \$677.82.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 29, 2022, is affirmed in part, and is reversed in part, with my additional and substituted analysis.

Defendant shall pay claimant 28.6 weeks of permanent partial disability benefits at the weekly rate of six hundred seventy-seven and 82/100 dollars (\$677.82), commencing on the stipulated commencement date of March 15, 2021.

Defendant shall receive credit for all benefits paid to date.

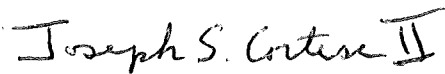
Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant is responsible for all future medical care causally related to claimant's work-related left lower extremity condition and defendant retains the right to choose which providers will provide claimant with that medical care.

Pursuant to rule 876 IAC 4.33, defendant shall reimburse claimant in the amount of two thousand five hundred twenty-one and 00/100 dollars (\$2,521.00) for the cost of Dr. Bansal's report, 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 20<sup>th</sup> day of April, 2023.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Mary Hamilton (via WCES)

Chris Scheldrup (via WCES)