

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BALBINO LARA,

Claimant,

vs.

SMITHFIELD FOODS, INC.,

Employer,

and

SAFETY NATIONAL CASUALTY CORP., :

Insurance Carrier,
Defendants.

File No. 21001591.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803.1; 1803.1;
2209; 2907; 5-9998

Claimant Balbino Lara appeals from an arbitration decision filed on April 22, 2022. Defendants Smithfield Foods, employer, and its insurer, Safety National Casualty Corporation, respond to the appeal. The case was heard on January 31, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 21, 2022.

In the arbitration decision, the deputy commissioner found that because claimant had been offered work by defendant-employer at the same or greater earnings than claimant received at the time of the stipulated February 6, 2020, work injury, claimant is entitled to receive functional disability for the work injury and not industrial disability. The deputy commissioner found claimant sustained five percent functional disability of his cervical spine as a result of the work injury, which entitles claimant to receive 25 weeks of permanent partial disability benefits commencing on October 2, 2020.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant sustained five percent functional disability, and claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive industrial disability benefits for the work injury. Claimant asserts the deputy commissioner erred in finding the opinions of Todd Harbach, M.D., regarding the extent of claimant's permanent disability and permanent restrictions resulting from the work injury are more persuasive than the opinions of Sunil Bansal, M.D.

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 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 April 22, 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.

I affirm the deputy commissioner's finding that Dr. Harbach's opinions regarding the extent of claimant's permanent disability and permanent restrictions are more persuasive than Dr. Bansal's opinions. I affirm the deputy commissioner's finding that defendants offered claimant work at the same or greater salary than claimant received at the time of the injury, thus limiting claimant's recovery in this matter to his functional disability. I affirm the deputy commissioner's finding that claimant sustained five percent functional disability of his cervical spine as a result of the work injury.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 22, 2022, is affirmed in its entirety.

Defendants shall pay claimant 25 weeks of permanent partial disability benefits at the stipulated weekly rate of six hundred fifty-four and 68/100 dollars (\$654.68), commencing on October 2, 2020.

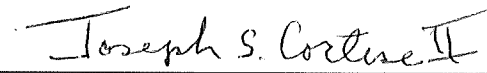
Defendants shall receive credit for all benefits previously paid.

Defendants 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.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's 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 26th day of October, 2022.

A handwritten signature in black ink, reading "Joseph S. Cortese II". The signature is written in a cursive style with a horizontal line underneath it.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Byrne (via WCES)

Michael Miller (via WCES)