

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NORIE C. SMITH,

Claimant,

vs.

TPI IOWA, LLC,

Employer,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.

File No. 5058936

A P P E A L

D E C I S I O N

Head Note Nos: 1108.50; 1402.30; 1803;
2907; 5-9999

Claimant Norie C. Smith appeals from an arbitration decision filed on December 19, 2018. Defendants TPI Iowa, employer, and its insurer, Insurance Company of the State of Pennsylvania, respond to the appeal. The case was heard on September 18, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 8, 2018.

The deputy commissioner found claimant failed to carry her burden of proof to establish she sustained an injury which arose out of and in the course of claimant's employment with defendant-employer on December 15, 2015, as alleged. The deputy commissioner found all other issues raised in this matter are moot. The deputy commissioner found claimant is entitled to receive nothing in this matter. 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 failed to prove she sustained a work-related injury as alleged. Claimant asserts the deputy commissioner erred in failing to award claimant substantial industrial disability for the alleged 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 failing to tax defendants with claimant's requested costs of the arbitration proceeding.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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 December 19, 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 prove she sustained a work-related injury as alleged. 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 is entitled to receive nothing in this matter. 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 those issues and I add the following analysis:

I affirm the deputy commissioner's finding that Jacqueline Stoken, D.O., who performed an independent medical evaluation (IME) of claimant at claimant's request, failed to provide an opinion that specifically relates claimant's alleged repetitive work activities to claimant's left shoulder condition that is the basis for this claim. (See, e.g., Exhibit 9) I find this failure by Dr. Stoken in her IME report is sufficient support for the deputy commissioner's finding that claimant failed to carry her burden of proof on the issue of causation.

However, the causation opinion I find to be most convincing in this matter, and which also supports the conclusion that this claim is not compensable, is that of Patrick Sullivan, M.D., orthopedic surgeon and shoulder specialist, who was selected by claimant, and who performed surgery on claimant's left shoulder for the condition that is the basis for this claim. In a report dated May 7, 2018, Dr. Sullivan stated the following, in pertinent part:

I received no bona fide information from the patient or any other credible source that would qualify her injury as a work related injury.

(Joint Exhibit 6, page 15)

I find Dr. Sullivan's opinion to be the most convincing in this case because, as stated above, he was selected by claimant under her private health insurance to be her treating surgeon for the condition in question (JE6, p. 1), he is a shoulder specialist, he performed surgery on claimant's shoulder during which he had the opportunity to evaluate claimant's shoulder intraoperatively (JE 7, p.1), and he evaluated claimant on at least seven occasions in 2016 and 2017. (JE6, pp. 1, 3-12)

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 19, 2018, 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 claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 7th day of February, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Erik A. Luthens Via WCES

Timothy W. Wegman Via WCES