

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD DE LORTO,

File No. 1662945.01

Claimant,

A P P E A L

vs.

D E C I S I O N

CRST VAN EXPEDITED, INC.,

Employer,
Self-Insured,
Defendant.Headnotes: 1402.20; 1402.30; 1802; 1803;
2501; 2502; 2907; 5-9998;

Claimant Richard De Lorto appeals from an arbitration decision filed on January 7, 2022. Defendant CRST Van Expedited, Inc., self-insured employer, responds to the appeal. The case was heard on October 18, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 17, 2021.

In the arbitration decision, the deputy commissioner found claimant proved that on April 10, 2019, he sustained a minor, temporary injury to his right knee which arose out of and in the course of his employment with defendant. The deputy commissioner found claimant failed to prove his permanent right knee, right shoulder, low back, and right hip conditions are causally related to the April 10, 2019, incident or that claimant sustained any temporary or permanent disability from that incident. The deputy commissioner found the opinion of David Segal, M.D., unpersuasive and unreliable because Dr. Segal's opinion was based, at least in part, on a fall of that did not occur, and Dr. Segal failed to consider subsequent events, including the actual incident claimant alleges caused his right shoulder condition. The deputy commissioner found claimant is not entitled to reimbursement for the cost of Dr. Segal's independent medical examination (IME) under Iowa Code section 85.39 because no physician retained by defendant made an evaluation of disability before Dr. Segal performed his IME. The deputy commissioner also declined to award the cost of Dr. Segal's IIME report under 876 Iowa Administrative Code 4.33 because the deputy commissioner found Dr. Segal's report was not credible or persuasive. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$169.61.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove the work injury caused any temporary or permanent impairment of his right knee. Claimant asserts the deputy commissioner erred in refusing to award claimant healing period benefits through February 17, 2020, and medical expenses for the treatment of his right knee. Claimant asserts the deputy commissioner erred in refusing to assess defendant with the cost of Dr. Segal's IME under Iowa Code section

85.39, or alternatively, to assess defendant with the cost of the IME report under 876 Iowa Administrative Code 4.33.

Defendant 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 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 January 7, 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 claimant proved he sustained a minor, temporary work-related injury to his right knee on April 10, 2019. I affirm the deputy commissioner's finding that claimant failed to prove his permanent right knee, right shoulder, low back, and right hip conditions are causally related to the April 10, 2019, incident, or that claimant sustained any temporary or permanent disability from that incident. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendant for the cost of Dr. Segal's IME under Iowa Code section 85.39, and I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement for the cost of the IME report under 876 IAC 4.33. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$169.61.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding the above-stated issues.

ORDER

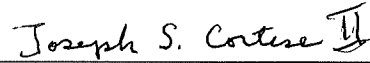
IT IS THEREFORE ORDERED that the arbitration decision filed on January 7, 2022, is affirmed in its entirety.

Claimant shall take nothing further with respect to temporary disability benefits, permanent disability benefits, or medical benefits.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred sixty-nine and 61/100 dollars (\$169.61), 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 25th day of May, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jason Neifert (via WCES)

Chris Scheldrup (via WCES)