

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANA SCHMIT,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 19007052.01

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 1402.40; 1803; 1803.1;
2502; 2907, 3002; 3202; 4000;
5-9998

Claimant Dana Schmit appeals from an arbitration decision filed on October 7, 2022. Defendant Tyson Fresh Meats, Inc. ("defendant"), self-insured employer, and defendant Second Injury Fund of Iowa ("the Fund"), respond to the appeal. The case was heard on April 27, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 27, 2022.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish he sustained five percent permanent impairment of his left shoulder caused by the stipulated June 3, 2019, work injury. The deputy commissioner found claimant failed to prove he sustained left ulnar neuropathy as a result of the work injury. The deputy commissioner found claimant failed to prove he sustained permanent impairment of his head or brain caused by the work injury. The deputy commissioner found claimant's weekly benefit rate is \$568.57. The deputy commissioner found claimant is not entitled to receive benefits from the Fund because claimant failed to prove he sustained a second qualifying injury. The deputy commissioner found claimant is not entitled to an award of penalty benefits based on defendant's alleged failure to perform an ongoing investigation into the permanency of claimant's alleged ulnar neuropathy and alleged brain injury. The deputy commissioner did find claimant is entitled to an award of \$100.00 in penalty benefits based on defendant's failure to convey the reason why defendant failed to pay claimant healing period benefits from December 11, 2019, through December 14, 2019. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant in the amount of \$3,250.00 for the cost of the

independent medical examination (IME) of claimant performed by David Segal, M.D. Pursuant to rule 876 IAC 4.33, 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 he sustained left ulnar neuropathy as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to give greater weight to Dr. Segal's left shoulder impairment rating, and claimant asserts the award for permanent partial disability should be increased substantially. Claimant asserts the deputy commissioner erred in finding claimant sustained disability of a scheduled member, and claimant asserts it should be found he sustained an injury to the body as a whole, which would entitle claimant to receive industrial disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to an award of penalty benefits based on defendant's alleged failure to perform an ongoing investigation into the permanency of claimant's alleged ulnar neuropathy. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive benefits from the Fund.

Defendant employer and the Fund 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 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on October 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 five percent permanent impairment of his left shoulder as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove he sustained left ulnar neuropathy as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove he sustained permanent impairment of his head or brain as a result of the work injury. I affirm the deputy commissioner's finding that claimant's weekly benefit rate is \$568.57. I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund because claimant failed to prove he sustained a second qualifying injury. I affirm the deputy commissioner's finding that claimant is not entitled to an award of penalty benefits based on an alleged failure by defendant to perform an ongoing investigation into the permanency of claimant's

alleged ulnar neuropathy and brain injury. I affirm the deputy commissioner's finding that claimant is entitled to an award of \$100.00 in penalty benefits based on defendant's failure to convey the reason why defendant failed to pay claimant healing period benefits from December 11, 2019, through December 14, 2019. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant for the cost of Dr. Segal's IME. I affirm the deputy commissioner's finding that pursuant to rule 876 IAC 4.33, the parties should bear their own costs of the arbitration proceeding.

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 October 7, 2022, is affirmed in its entirety.

Defendant shall pay claimant 20 weeks of permanent partial disability benefits at the weekly rate of five hundred sixty-eight and 57/100 dollars (\$568.57), commencing on June 11, 2020.

Defendant is entitled to a credit for all weekly benefits paid to date.

Defendant-employer 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.

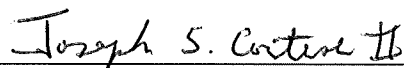
There is no Second Injury Fund liability in this matter.

Defendant shall pay claimant one hundred and 00/100 dollars (\$100.00) in penalty benefits.

Pursuant to Iowa Code section 85.39, defendant shall reimburse claimant three thousand two hundred fifty and 00/100 dollars (\$3,250.00) for the cost of Dr. Segal's IME.

Pursuant to 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 transcript.

Signed and filed on this 9th day of March, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Benjamin Roth (via WCES)

Jason Wiltfang (via WCES)

Meredith Cooney (via WCES)