

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACINTO SARCENO,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

FILED

JUN 26 2017

File No. 5046324 WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note No: 1803

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from an arbitration decision filed December 1, 2015. Claimant Jacinto Sarceno responds to the appeal. The case was heard on December 11, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 5, 2015.

The deputy commissioner found that the stipulated work-related injury which arose out of and in the course of claimant's employment with defendant on October 17, 2012, caused claimant to sustain a permanent aggravation of a pre-existing degenerative low back condition. The deputy commissioner awarded claimant 30 percent industrial disability, which entitles claimant to 150 weeks of permanent partial disability (PPD) benefits. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration action.

Defendant asserts on appeal that the deputy commissioner erred in finding the work injury caused permanent disability. Defendant asserts the work injury caused only a temporary aggravation of claimant's pre-existing low back condition.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on December 1, 2015, which relate to issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that the work injury of October 17, 2012, caused a permanent aggravation of claimant's pre-existing low back condition. I affirm the deputy commissioner's award of 30 percent industrial disability. I also affirm the deputy commissioner's order taxing defendant with claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 1, 2015, is affirmed in its entirety.

Defendant shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the stipulated weekly rate of four hundred twelve and 86/100 dollars (\$412.86) commencing on April 10, 2013.

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding, and defendant shall pay 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 this 26th day of June, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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