

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPHINE F. PEDRO,

Claimant,

vs.

TYSON FOODS, INC.,

Employer,

Self-Insured,

Defendant.

File No. 5056938

A P P E A L

D E C I S I O N

Head Note Nos: 1108; 1803; 1803.1; 2501;  
5-9998

**FILED**

**OCT 31 2018**

**WORKERS' COMPENSATION**

Defendant Tyson Foods, Inc., self-insured employer, appeals from an arbitration decision filed on June 21, 2018. Claimant Josephine F. Pedro responds to the appeal. The case was heard on July 25, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 14, 2017.

The deputy commissioner found claimant carried her burden of proof that she sustained permanent disability of her left third finger and her right shoulder as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant on October 18, 2015. The deputy commissioner found claimant sustained 30 percent industrial disability as a result of the work injury, which entitles claimant to receive 150 weeks of permanent partial disability (PPD) benefits commencing on July 8, 2017. The deputy commissioner found claimant is entitled to receive healing period benefits from July 14, 2016, through July 7, 2017. The deputy commissioner found claimant is entitled to receive reimbursement from defendants for the claimed past medical expenses incurred with Arnold Delbridge, M.D., itemized in Exhibit 4. The deputy commissioner found claimant is entitled to receive alternate medical care in the form of ongoing treatment by Dr. Delbridge for claimant's work-related right shoulder condition. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$690.46.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant's permanent disability resulting from the work injury extends beyond claimant's left third finger to also include claimant's right shoulder. Defendant asserts the deputy commissioner erred in awarding claimant anything more than scheduled member functional disability benefits for claimant's left third finger. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive industrial disability benefits. Defendant asserts the deputy commissioner erred in finding claimant is entitled to

receive healing period benefits from July 14, 2016, through July 7, 2017. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive reimbursement from defendant for the past medical expenses from Dr. Delbridge itemized in Exhibit 4. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive alternate medical care in the form of ongoing treatment by Dr. Delbridge for claimant's work-related right shoulder condition.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's injury on her left side is limited to her left third finger only. Claimant asserts the deputy commissioner erred in failing to find claimant's injury on her left side is to her left hand. Claimant asserts the deputy commissioner erred in finding claimant sustained 30 percent industrial disability as a result of the work injury. Claimant asserts the award for industrial disability should be increased to 45 percent or more.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a 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 July 21, 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 carried her burden of proof that she sustained permanent disability of her left third finger and her right shoulder as a result of the October 18, 2015, work injury. I affirm the deputy commissioner's finding that claimant sustained 30 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from July 14, 2016, through July 7, 2017. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for the past medical expenses from Dr. Delbridge itemized in Exhibit 4. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care in the form of ongoing treatment by Dr. Delbridge for claimant's work-related right shoulder condition. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$690.46.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant was credible. Defendant asserts the deputy commissioner erred in finding claimant was credible. Claimant asserts the deputy

commissioner's finding that claimant was credible should be affirmed. 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. I find the deputy commissioner correctly assessed claimant's credibility in this matter. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's finding that claimant was credible.

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

### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 21, 2018, is affirmed in its entirety.

The parties are ordered to comply with all stipulations accepted by this agency in the arbitration proceeding.

Defendant shall pay claimant healing period benefits at the stipulated weekly rate of three hundred seventy-nine and 11/100 dollars (\$379.11) from July 14, 2016, through July 7, 2017.

Defendant shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits commencing on July 8, 2017, at the stipulated weekly rate of three hundred seventy-nine and 11/100 dollars (\$379.11).

Defendant shall receive a credit for all benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant shall pay the past medical expenses incurred with Arnold Delbridge, M.D., itemized in Exhibit 4.

Defendant shall provide claimant with ongoing medical treatment by Dr. Delbridge for claimant's work-related right shoulder condition.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of \$690.46, and the parties shall split 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 on this 31<sup>st</sup> day of October, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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