

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

IRMA TREVINO,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File Nos. 5046972
5046973

JAN 26 2017

WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note Nos: 1100, 1801, 1803, 2500

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from an arbitration decision filed on September 29, 2015. Claimant Irma Trevino responds to the appeal. The case was heard on May 21, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 4, 2015.

In File No. 5046972, alleged injury date of May 7, 2012, the deputy commissioner found claimant carried her burden of proof that she sustained an injury to her left foot which arose out of and in the course of her employment with defendant. The deputy commissioner awarded claimant healing period benefits from March 10, 2014, through August 14, 2014. The deputy commissioner also awarded claimant a running award of healing period benefits from February 11, 2015, and continuing. The deputy commissioner ordered defendant to pay the providers, or reimburse claimant, for requested past medical expenses which the deputy commissioner found were for treatment necessitated by the work injury. The deputy commissioner ordered defendant to pay claimant's future medical expenses necessitated by the work injury. The deputy commissioner also ordered defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5046973, alleged injury date of August 3, 2012, the deputy commissioner found claimant carried her burden of proof that she sustained an injury to her left knee which arose out of and in the course of her employment with defendant. The deputy commissioner awarded claimant scheduled member permanent impairment of seven percent of the left lower extremity, which entitles claimant to 15.4 weeks of permanent partial disability (PPD) benefits, commencing on August 3, 2012. The deputy commissioner ordered defendant to pay the providers, or reimburse claimant, for requested past medical expenses which the deputy commissioner found were for

treatment necessitated by the work injury. The deputy commissioner ordered defendant to pay claimant's future medical expenses necessitated by the work injury. The deputy commissioner ordered defendant to pay 60 percent of the cost of the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on February 27, 2015. The deputy commissioner also ordered defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5046972, defendant asserts on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained an injury to her left foot on May 7, 2012, which arose out of and in the course of claimant's employment with defendant. Defendant asserts the deputy commissioner erred in awarding claimant healing period benefits from March 10, 2014, through August 14, 2014. Defendant asserts the deputy commissioner erred in awarding claimant a running award of healing period benefits from February 11, 2015, and continuing. Defendant asserts the deputy commissioner erred in ordering defendant to pay the providers, or reimburse claimant, for requested past medical expenses. Defendant asserts the deputy commissioner erred in ordering defendant to pay claimant's future medical expenses for claimant's left foot condition. Defendant asserts the deputy commissioner erred in ordering defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5046973, defendant asserts on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained an injury to her left knee August 3, 2012, which arose out of and in the course of her employment with defendant. Defendant asserts the deputy commissioner erred in awarding claimant scheduled member permanent impairment of seven percent of the left lower extremity, which entitles claimant to 15.4 weeks of PPD benefits, commencing on August 3, 2012. Defendant asserts the deputy commissioner erred in ordering defendant to pay the providers, or reimburse claimant, for requested past medical expenses. Defendant asserts the deputy commissioner erred in ordering defendant to pay claimant's future medical expenses for claimant's left knee condition. Defendant asserts the deputy commissioner erred in ordering defendant to pay 60 percent of the cost of Dr. Bansal's IME. Defendant asserts the deputy commissioner erred in ordering defendant to pay claimant's costs of the arbitration proceeding.

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 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 29, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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.

In File No 5046972, I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained an injury to her left foot on May 7, 2012, which arose out of and in the course of claimant's employment with defendant. I affirm the deputy commissioner's award of healing period benefits from March 10, 2014, through August 14, 2014. I affirm the deputy commissioner's running award of healing period benefits from February 11, 2015, and continuing. I affirm the deputy commissioner's order that defendant pay the providers, or reimburse claimant, for requested past medical expenses. I affirm the deputy commissioner's order that defendant pay claimant's future medical expenses for claimant's work-related left foot condition. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding.

In File No 5046973, I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained an injury to her left knee on August 3, 2012, which arose out of and in the course of claimant's employment with defendant. I affirm the deputy commissioner's award of scheduled member permanent impairment of seven percent of the left lower extremity, which entitles claimant to 15.4 weeks of PPD benefits, commencing on August 3, 2012. I affirm the deputy commissioner's order that defendant pay the providers, or reimburse claimant, for requested past medical expenses. I affirm the deputy commissioner's order that defendant pay claimant's future medical expenses for claimant's work-related left foot condition. I affirm the deputy commissioner's order that defendant pay 60 percent of the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 29, 2015, is affirmed in its entirety.

Regarding File No. 5046972, injury date of May 7, 2012, involving the left foot:

Defendant shall pay claimant healing period benefits, at the rate of three hundred seventy-one and 67/100 dollars (\$371.67) per week, from March 10, 2014, to August 14, 2014, and from February 11, 2015, and continuing as a running award of healing period benefits until claimant has met the requirements for termination of healing period benefits.

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

Defendant shall be given credit for benefits previously paid.

Defendant shall pay the providers, or reimburse claimant, for past medical expenses submitted by claimant at the arbitration hearing.

Defendant shall pay claimant's future medical necessitated by the work injury.

Pursuant to rule 876 IAC 4.33, defendant shall pay the 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.

Regarding File No. 5046973, injury date of August 3, 2012, involving the left knee:

Defendant shall pay claimant fifteen point four (15.4) weeks of permanent partial disability benefits at the rate of three hundred fifty-seven and 98/100 dollars (\$357.98) per week from August 3, 2012.

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

Defendant shall be given credit for benefits previously paid.

Defendant shall pay the providers, or reimburse claimant, for past medical expenses submitted by claimant at the arbitration hearing.

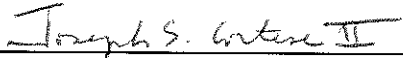
Defendant shall pay claimant's future medical necessitated by the work injury.

Defendant shall pay, or reimburse claimant, for sixty (60) percent of Dr. Bansal's IME fee.

Pursuant to rule 876 IAC 4.33, defendant shall pay the 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 January, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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