

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PEDRO MERO BUSTOS,

File No. 19700550.01

Claimant,

A P P E A L

vs.

D E C I S I O N

TYSON FOODS, INC.,

Employer,
Self-Insured,
Defendant.Head Notes: 1402.20; 1402.40; 1402.10;
1802; 1803; 2501; 2701;
2907; 5-9998

Claimant Pedro Mero Bustos appeals from an arbitration decision filed on February 14, 2022. Defendant Tyson Foods, Inc., self-insured employer, responds to the appeal. The case was heard on November 8, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 20, 2021.

In the arbitration decision, the deputy commissioner found claimant failed to prove he sustained permanent disability of his left shoulder as a result of the stipulated work injury which occurred on May 1, 2019. The deputy commissioner found claimant's permanent disability caused by the work injury is confined to claimant's low back. The deputy commissioner found claimant is entitled to receive healing period benefits for the work injury from February 3, 2020, to September 2, 2020. The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(v), claimant should be compensated for permanent disability for the work injury on a functional basis instead of on an industrial disability basis because defendant offered claimant work at the same or greater salary, wages, or earnings as claimant was earning when he was injured on May 1, 2019. The deputy commissioner found claimant's permanent functional impairment resulting from the work injury is ten percent of the body as a whole, which entitles claimant to receive 50 weeks of permanent partial disability benefits. The deputy commissioner found claimant is not entitled to reimbursement from defendant for the requested past medical expenses itemized in claimant's Exhibit 3. The deputy commissioner found claimant failed to prove he is entitled to alternate medical care for the work injury. The deputy commissioner found defendant is entitled to a credit for 50 weeks of benefits paid to claimant prior to the arbitration hearing.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's healing period ended on September 2, 2020. Claimant asserts it should be found on appeal that claimant is entitled to receive healing period benefits February 3, 2020, to September 24, 2021. Claimant asserts the deputy commissioner erred in finding claimant's permanent functional impairment resulting from the work injury is ten

percent of the body as a whole. Claimant asserts it should be found on appeal that claimant's permanent functional impairment resulting from the work injury is 16 percent of the body as a whole, which would entitle claimant to receive 80 weeks of permanent partial disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendant for the requested past medical expenses. Claimant asserts the deputy commissioner erred in finding claimant failed to prove he is entitled to alternate medical care for the work injury.

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 February 14, 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 failed to prove he sustained permanent disability of his left shoulder as a result of the May 1, 2019, work injury. I affirm the deputy commissioner's finding that claimant's permanent disability caused by the work injury is confined to claimant's low back. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits for the work injury from February 3, 2020, to September 2, 2020. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(2)(v), claimant should be compensated for permanent disability for the work injury on a functional basis instead of on an industrial disability basis because defendant offered claimant work at the same or greater salary, wages, or earnings as claimant was earning when he was injured on May 1, 2019. I affirm the deputy commissioner's finding that claimant's permanent functional impairment resulting from the work injury is ten percent of the body as a whole, which entitles claimant to receive 50 weeks of permanent partial disability benefits. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendant for the requested past medical expenses itemized in claimant's Exhibit 3. I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to alternate medical care for the work injury. I affirm the deputy commissioner's finding that defendant is entitled to a credit for 50 weeks of benefits paid to claimant prior to the arbitration hearing.

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 February 14, 2022, is affirmed in its entirety.

Defendant shall pay claimant healing period benefits from February 3, 2020, to September 2, 2020, at the stipulated weekly rate of five hundred thirty and 57/100 dollars (\$530.57).

Defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred thirty and 57/100 dollars (\$530.57) commencing on September 3, 2020.

Defendants shall receive credit for fifty (50) weeks of benefits previously paid.

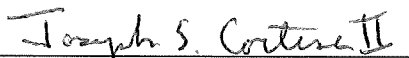
Accrued weekly benefits shall be paid in lump sum and interest shall be payable on all accrued benefits at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Claimant's request for alternate medical care and claimant's request for payment of the requested past medical expenses itemized in claimant's Exhibit 3 are denied.

Pursuant to rule 876 IAC 4.33, claimant 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 on this 28th day of July, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mary Hamilton (via WCES)

Chris Scheldrup (via WCES)