

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WARREN A. HAVILL,

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INS. CO. OF
NORTH AMERICA,

Insurance Carrier,
Defendants.

File No. 5068734

A P P E A L

D E C I S I O N

Head Notes: 1403.30; 1803; 2400; 2402;
2502; 2701; 2907; 3001;
3002; 5-9998

Claimant Warren A. Havill appeals from an arbitration decision filed on November 12, 2020. Defendants Quaker Oats Company, employer, and its insurer, Indemnity Ins. Co. of North America, respond to the appeal. The case was heard on August 18, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 30, 2020.

In this case, claimant filed his original notice and petition on June 20, 2019, alleging he sustained a work-related cumulative tinnitus condition with an injury date of June 10, 2019. Defendants affirmatively alleged the actual injury date was more than two years prior to June 20, 2019, with the result that claimant's claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26.

In the arbitration decision, the deputy commissioner found the actual injury date in this matter is fall 2016. The deputy commissioner found claimant, as a reasonable person, either knew, or should have known, by fall 2016, the nature of his tinnitus condition, the seriousness of the condition, and the possible compensable nature of the condition. The deputy commissioner found that because no weekly benefits have ever been paid on this claim, and because claimant's original notice and petition was filed more than two years after fall 2016, this claim is barred by Iowa Code section 85.26. The deputy commissioner found all other issues raised in this matter are moot, including claimant's entitlement to permanent disability benefits, claimant's correct gross average weekly wage and correct weekly benefit rate, claimant's entitlement to alternate medical care, claimant's entitlement to reimbursement for the cost of an independent medical evaluation, and claimant's entitlement to an assessment of costs.

Claimant asserts on appeal that the deputy commissioner erred in finding June 10, 2019, is not the correct injury date, in finding this claim is barred by Iowa Code section 85.26, and in finding all other issues raised in this matter are moot.

Defendants assert 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.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. 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 November 12, 2020, 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 the actual injury date in this matter is fall 2016. I affirm the deputy commissioner's finding that claimant, as a reasonable person, either knew, or should have known, by fall 2016, the nature of his tinnitus condition, the seriousness of the condition, and the possible compensable nature of the condition. I affirm the deputy commissioner's finding that because no weekly benefits have ever been paid on this claim, and because claimant's original notice and petition was filed more than two years after fall 2016, this claim is barred by Iowa Code section 85.26. I affirm the deputy commissioner's finding that all other issues raised in this matter are moot.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 12, 2020, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 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 hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 10th day of March, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows

Nate Willems (via WCES)

Kent Smith (via WCES)