

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GEORGE TYLER,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.File Nos. 20010491.01
20010492.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 1402.40;
1403.30; 2209; 2401, 2802:
2907; 5-9998

Claimant George Tyler appeals from an arbitration decision filed on January 21, 2022. Defendant Tyson Fresh Meats, Inc., self-insured employer, responds to the appeal. The case was heard on July 27, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 3, 2021.

In File No. 20010491.01, alleged injury date of September 10, 2018, the deputy commissioner found claimant failed to meet his burden of proof to establish he sustained a traumatic work-related injury on September 10, 2018, as alleged. The deputy commissioner found claimant is entitled to recover nothing from defendant in File No. 20010491.01.

In File No. 20010492.01, alleged injury date of October 31, 2018, the deputy commissioner found claimant carried his burden of proof to establish he sustained a work-related cumulative trauma injury to his low back. The deputy commissioner found claimant knew, or should have known, the nature and the seriousness of the injury as early as October 31, 2018, and certainly no later than April of 2019. The deputy commissioner found that pursuant to Iowa Code section 85.23, claimant was required to provide defendant with notice of the injury no later than 90 days after April of 2019, which is a deadline of July 28, 2019. The deputy commissioner found claimant did not provide defendant with notice of the injury until October 22, 2019, which was 85 days after July 28, 2019. The deputy commissioner found claimant's claim in File No. 20010492.01 is statutorily barred by Iowa Code section 85.23, and the deputy commissioner found claimant is entitled to recover nothing from defendant in File No. 20010492.01.

For both files, the deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 20010491.01, claimant raises no arguments on appeal. Therefore, all of the deputy commissioner's findings and conclusions in File No. 20010491.01 are affirmed.

In File No. 20010492.01, claimant asserts the deputy commissioner erred in finding claimant knew, or should have known, the nature and the seriousness of the injury as early as October 31, 2018, and certainly no later than April of 2019. Claimant asserts it should be found on appeal that claimant did not know the nature and the seriousness of the injury until August or September of 2019, and claimant asserts it should be found claimant's notice of the injury provided on October 22, 2019, was provided in a timely fashion. Claimant asserts the deputy commissioner erred in finding claimant's claim in File No. 20010492.01 is statutorily barred by Iowa Code section 85.23, and claimant asserts the deputy commissioner erred in finding claimant is entitled to recover nothing from defendant in File No. 20010492.01.

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 January 21, 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.

In File No. 20010491.01 I affirm the deputy commissioner's finding that claimant failed to prove he sustained a traumatic work-related injury on September 10, 2018, as alleged. I affirm the deputy commissioner's finding that claimant is entitled to recover nothing from defendant in File No. 20010491.01.

In File No. 20010492.01 I affirm the deputy commissioner's finding that claimant proved he sustained a work-related cumulative trauma injury to his low back. I affirm the deputy commissioner's finding that claimant knew, or should have known, the nature and the seriousness of the injury as early as October 31, 2018, and certainly no later than April of 2019. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.23, claimant was required to provide defendant with notice of the injury no later than 90 days after April of 2019, which is a deadline of July 28, 2019. I affirm the deputy commissioner's finding that claimant did not provide defendant with notice of the injury until October 22, 2019, which was 85 days after July 28, 2019. I affirm the

deputy commissioner's finding that claimant's claim in File No. 20010492.01 is statutorily barred by Iowa Code section 85.23, and I affirm the deputy commissioner's finding that claimant is entitled to recover nothing from defendant in File No. 20010492.01.

For both files, I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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 not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable deference to findings of fact which are impacted by the credibility findings expressly or impliedly made by the deputy commissioner who presided at the hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

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

ORDER

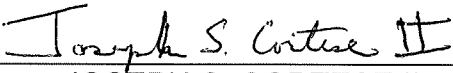
IT IS THEREFORE ORDERED that the arbitration decision filed on January 21, 2022, is affirmed in its entirety.

Claimant shall take nothing in either file 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 30th day of June, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Benjamin Roth (via WCES)

Jason Wiltfang (via WCES)