

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VICTORIA TRUJILLO,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured
Defendant.

File No. 19700625.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803, 1803.1;
2501; 2907; 5-9990

Claimant Victoria Trujillo appeals from an arbitration decision filed on March 17, 2021. Defendant John Deere Davenport Works, self-insured employer, responds to the appeal. The case was heard on November 18, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 5, 2021.

In the arbitration decision, the deputy commissioner found that the permanent impairment rating of claimant's treating orthopedic surgeon, John Hoffman, M.D., is more persuasive than the permanent impairment rating of claimant's expert witness, Richard Kreiter, M.D. Based on Dr. Hoffman's impairment rating, the deputy commissioner found that as a result of the stipulated September 18, 2018, work injury, claimant sustained five percent permanent scheduled member disability of the right shoulder, which entitles claimant to receive 20 weeks of permanent partial disability benefits starting on the stipulated commencement date of June 27, 2019. The deputy commissioner also found claimant failed to prove she sustained an injury to her neck as a result of the work injury, with the result that the deputy commissioner found claimant failed to prove she is entitled to receive industrial disability benefits for the work injury. The deputy commissioner found claimant is entitled to receive reimbursement from defendant in the amount of \$364.36 for mileage expense related to claimant's medical treatment for the work injury. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding Dr. Hoffman's impairment rating is more persuasive than Dr. Kreiter's impairment rating. Claimant asserts the award for permanent disability should be increased to 18 percent of the right shoulder pursuant to Dr. Kreiter's impairment rating. Claimant asserts the award for medical mileage should be increased to \$501.70. Claimant asserts the deputy commissioner erred in failing to award claimant's costs of the arbitration

proceeding in the amount of \$100.00. Claimant also asserts the deputy commissioner violated her due process rights and her equal protection rights.

Defendant 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.

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 March 17, 2021, 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 Dr. Hoffman's impairment rating is more persuasive than Dr. Kreiter's impairment rating. I affirm the deputy commissioner's finding that based on Dr. Hoffman's impairment rating, claimant sustained five percent permanent scheduled member disability of the right shoulder as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove she sustained an injury to her neck as a result of the work injury, and I affirm the deputy commissioner's finding that claimant failed to prove she is entitled to receive industrial disability benefits for the work injury. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues without further analysis, and I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendant in the amount of \$364.36 for mileage expense related to claimant's medical treatment for the work injury with the following additional analysis:

Claimant asserts the deputy commissioner violated her due process rights by "engaging in advocacy" when calculating claimant's mileage reimbursement. Claimant alleges the deputy commissioner conducted an "independent investigation" by relying on Google Maps to determinate the mileage from claimant's home to her medical appointments.

The deputy commissioner, however, did not investigate any facts, nor did he consider any evidence outside the record. Claimant's home address and the addresses of her medical providers were facts in the record. (See Claimant's Exhibit 5) The deputy commissioner did nothing to elicit or collect facts or evidence. He simply relied on the

addresses provided by claimant. There is nothing partisan or biased about inputting the addresses already in the record into a commonly used tool to determine the distance from one point to another.

Notably, claimant admits in her appeal brief that she did not present an explanation for her own mileage calculation. (See Cl. Appeal Brief, pp. 17, 20) Although it was claimant's burden to prove her entitlement to reimbursement, she states on appeal for the first time that claimant's route to her medical appointments was not the most direct route because of heavy road construction. (*Id.*) Claimant criticizes the agency for not considering this circumstance. Yet by asking the agency to consider information that was not included in the evidence, claimant asks the agency to commit the same type of due process violation of which, without justification, she accuses the agency.

For these reasons, I find the deputy commissioner did not violate claimant's due process rights. I find claimant failed to prove she is entitled to reimbursement in the amount of \$501.70 for her medical mileage and I affirm the deputy commissioner's award of \$364.36 for medical mileage.

Furthermore, claimant's assertion that the deputy commissioner violated her equal protection rights is also entirely without merit. Such a baseless assertion is not taken lightly by this agency, especially because claimant pointed to no evidence whatsoever in the record to support her allegation. I find no evidence that claimant was subjected to different rules of judicial decision-making regarding her race, national origin, gender or sexual orientation. Claimant's assertion in this regard is entirely unsupported by the record.

I therefore find claimant is not entitled to a new hearing, nor is she entitled to any additional reimbursement from defendants beyond \$364.36 for her mileage expense.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 17, 2021, is affirmed in its entirety with the above additional analysis.

Defendant shall pay claimant twenty (20) weeks of permanent partial disability benefits at the weekly rate of five hundred fifty-seven and 30/100 dollars (\$557.30) from the stipulated commencement date of June 27, 2019.

Pursuant to the stipulation of the parties, defendant shall receive credit for twenty (20) weeks of benefits at the weekly rate of five hundred fifty-seven and 30/100 dollars (\$557.30).

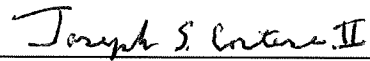
Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the Federal Reserve in the most recent H15 report settled as of the date of the injury, plus two percent.

Defendant shall reimburse claimant in the amount of three hundred sixty-four and 36/100 dollars (\$364.36) for medical mileage expense.

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 (SROI) as required by this agency.

Signed and filed on this 4th day of August, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mary Leanne Tyler (via WCES)

Troy Howell (via WCES)