

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DOUGLAS JONES,

Claimant,

vs.

WAL-MART,

Employer,

and

NEW HAMPSHIRE
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5063564

A P P E A L

D E C I S I O N

Head Notes: 1101; 1106; 1402.30; 2502;
2907; 5-9999

Claimant Douglas Jones appeals from an arbitration decision filed on February 27, 2019. Defendants Wal-Mart, employer, and its insurer, New Hampshire Insurance Company, cross-appeal. The case was heard on November 6, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 10, 2018.

In the arbitration decision, the deputy commissioner found claimant sustained an unexplained, as opposed to idiopathic, fall. When addressing whether claimant's injury arose out of his employment, the deputy commissioner determined the "actual risk" doctrine was the applicable standard for unexplained falls. The deputy commissioner found concrete floors present an actual risk of injury, and as such, the deputy commissioner found claimant established his unexplained fall onto concrete arose out of his employment with defendant-employer.

With respect to whether claimant's injury occurred in the course of his employment, the deputy commissioner found claimant arrived unreasonably early for his work shift and that the premises rule was therefore not applicable. The deputy commissioner also found claimant's early arrival provided no significant benefit to defendant-employer. For these reasons, the deputy commissioner found claimant failed to prove his injury occurred in the course of his employment, meaning claimant failed to prove a compensable work injury.

On appeal, claimant argues he sustained an injury that both arose out of and in the course of his employment. Claimant asserts he is entitled to receive temporary benefits, permanency benefits, medical expenses, alternate medical care, penalty benefits, and costs.

On cross-appeal, defendants seek affirmance of the deputy commissioner's finding that claimant's injury did not occur in the course of his employment, but they argue claimant also failed to establish his injury arose out of his employment.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, those portions of the proposed arbitration decision filed on February 27, 2019, that relate to the issues properly raised on intra-agency appeal are affirmed, although I decline to adopt some of the deputy commissioner's findings, analysis, and rationale, as set forth below.

I affirm the deputy commissioner's finding that claimant failed to prove his injury occurred in the course of his employment. In doing so, I affirm the deputy commissioner's finding that claimant's arrival an hour and forty-five minutes before his scheduled shift was not reasonable. I also affirm the deputy commissioner's finding that claimant's early arrival did not provide a significant benefit to defendant-employer. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to this issue.

"[I]t is well settled in Iowa that for an injury to be compensable, it must occur both in the course of and arise out of employment." Miedema v. Dial Corp., 551 N.W.2d 309, 310–11 (Iowa 1996) (emphasis added). In this case, having affirmed the deputy commissioner's determination that claimant failed to prove his injury occurred in the course of his employment, I likewise affirm the deputy commissioner's finding that claimant is unable to prove he sustained a compensable work injury.

Because "both [tests] must be satisfied in order for an injury to be deemed compensable" and claimant in this case failed to establish the "in the course of" prong, there is no need to address whether claimant satisfied the "arising out of" prong. Id. at 311. As such, I decline to adopt the deputy commissioner's findings, conclusions, or analysis regarding whether claimant's injury arose out of his employment. Thus, the deputy commissioner's arbitration decision is adopted but for any findings, conclusions, or analysis relating to whether claimant's injury arose out of his employment.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 27, 2019, is affirmed, with the exception of the deputy commissioner's findings, conclusions, and analysis relating to whether claimant's claim arose out of his employment, which I decline to adopt.

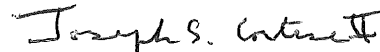
Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of two thousand nine hundred eighty-three and no/100 dollars (\$2,983.00) for the cost of Dr. Bansal's independent medical evaluation.

Claimant shall take nothing further in this matter.

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 30th day of March, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Christopher D. Spaulding

Matthew R. Denning

Adam P. Bates