

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD JURRIES,

Claimant,

vs.

TYSON FOODS, INC.,

Employer,
Self-Insured
Defendant.

File Nos. 5048758 and 5048759

A P P E A L

D E C I S I O N

Headnotes: 1402.40; 1803; 2403, 2905;
2907; 5-9999

Defendant Tyson Foods, Inc., self-insured employer, appeals from a review-reopening decision filed on April 5, 2021, and from an amended and substituted review-reopening decision filed on May 3, 2021.¹ Claimant Richard Jurries responds to the appeal. The case was heard on November 23, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 23, 2020.

In the decision, the deputy commissioner found claimant is entitled to review-reopening because he sustained a change in physical condition resulting in an additional 35 percent industrial disability, 15 percent of which is attributable to the change in claimant's low back condition (File No. 5048758 – injury date of December 12, 2012), and 20 percent of which is attributable to the change in claimant's cervical condition (File No. 5048759 – injury date of March 6, 2013). In doing so, the deputy commissioner found claimant to be a credible witness.

Defendant asserts on appeal that the deputy commissioner should have awarded no more than ten percent additional industrial disability for claimant's cervical condition and nothing for claimant's low back condition.

Claimant asserts on appeal that the amended and substituted review-reopening decision should be affirmed in its entirety.

Those portions of the proposed amended and substituted review-reopening decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

¹ The amended and substituted review-reopening decision was filed to remove reference to an exhibit that was not admitted at hearing. As a result, the amended and substituted decision will be relied upon for purposes of this appeal.

I have 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, I affirm and adopt as the final agency decision those portions of the proposed amended and substituted review-reopening decision filed on May 3, 2021, that relate to the issues properly raised on intra-agency appeal. I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner with the brief additional analysis set forth below.

With respect to claimant's back (File No. 5048758), I affirm the deputy commissioner's finding that claimant proved he sustained a physical change in condition that results in an additional 15 percent industrial disability. I acknowledge defendant's argument that the 50-pound lifting restriction assigned by Robert Gordon, M.D., was later deemed unnecessary by him based on the absence of objective findings. However, the fact remains that defendant accepted the 50-pound lifting restriction after the arbitration hearing and was continuing to honor it at the time of the review-reopening hearing. Importantly, this restriction resulted in claimant's disqualification from his manifest pizza job.

With respect to claimant's neck (File No. 5048759), I affirm the deputy commissioner's finding that claimant proved he sustained a physical change in condition that results in an additional 20 percent industrial disability. Claimant had surgery after the arbitration hearing that results in a higher whole body impairment rating than what was assigned at the time of the arbitration decision. Further, after losing his manifest pizza job due to the 50-pound lifting restriction imposed by Dr. Gordon, claimant had difficulty finding a position for which he was qualified that fell within his physical limitations. For example, claimant was subsequently unable to perform the cold scale operator position due to his neck condition.

With this brief additional analysis, the deputy commissioner's findings of fact, conclusions of law, and analysis contained in the review-reopening decision are affirmed in their entirety.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. The deputy commissioner found claimant to be a credible witness. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings. I find the deputy commissioner correctly assessed claimant's credibility. Therefore, I affirm the deputy commissioner's finding that claimant was a credible witness.

ORDER

IT IS THEREFORE ORDERED that the amended and substituted review-reopening decision filed on May 3, 2021, is affirmed in its entirety with the above-stated additional analysis.

File No. 5048758 – Injury Date of December 12, 2012:

Defendant shall pay claimant an additional seventy-five weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred ninety-five and 72/100 (\$395.72) commencing on March 4, 2019.

File No. 5048759 - Injury Date of March 6, 2013:

Defendant shall pay claimant an additional 100 weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred eighty-nine and 25/100 dollars (\$389.25) commencing on March 4, 2019.

For Both Files:

Defendant shall receive a credit for all benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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).

Defendant shall reimburse claimant one thousand one hundred sixty-five and 88/100 dollars (\$1,165.88) for the cost of Stanley Mathew, M.D.'s independent medical examination, as stipulated at the review-reopening hearing.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the review-reopening proceeding in the amount of four hundred fifty-four and 60/100 dollars (\$454.60), and defendant 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 14th day of September, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Emily Anderson (via WCES)

Dillon Besser (via WCES)

Jason Wiltfang (via WCES)