

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERICA TORRES,

Claimant,

vs.

JOHN DEERE WATERLOO WORKS,

Employer,  
Self-Insured,  
Defendant.

**FILED**

AUG 10 2018

WORKERS' COMPENSATION

File Nos. 5053687, 5053688  
5053689, 5053690

A P P E A L

D E C I S I O N

: Head Note Nos: 1100; 1802; 1803; 5-9998

Claimant Erica Torres appeals from an arbitration decision filed on March 24, 2017. Defendant John Deere Waterloo Works, self-insured employer, responds to the appeal. The case was heard on November 29, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 12, 2017.

The deputy commissioner found claimant failed to carry her burden of proof that she sustained cumulative injuries which arose out of and in the course of her employment with defendant on or about November 11, 2013, or on or about November 8, 2013, or on or about December 9, 2013, or on or about July 25, 2014, as alleged. Because the deputy commissioner found claimant failed to carry her burden of proof on the issues of causation and compensability regarding claimant's alleged injuries, the deputy commissioner found claimant failed to prove entitlement to temporary disability benefits and permanent disability benefits. Because the deputy commissioner found claimant failed to carry her burden of proof on the issues of causation and compensability, the deputy commissioner found defendant's Iowa Code section 85.23 90-day notice defense is moot. The deputy commissioner found claimant is not entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of the independent medical evaluation (IME) of claimant performed by Farid Manshadi, M.D. 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 claimant failed to carry her burden of proof that she sustained work-related cumulative injuries on or about November 11, 2013, or on or about November 8, 2013, or on or about December 9, 2013, or on or about July 25, 2014, as alleged. Claimant asserts the deputy commissioner erred in finding claimant failed to prove entitlement to receive temporary disability benefits and permanent disability benefits. Claimant asserts the deputy commissioner erred in failing to award claimant at least 70 percent industrial disability. Claimant asserts the deputy commissioner erred in finding claimant is not

entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of Dr. Manshadi's IME. Claimant asserts the deputy commissioner erred in failing to order defendant to pay claimant's costs of the arbitration proceeding.

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 24, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 claimant failed to carry her burden of proof that she sustained work-related cumulative injuries on or about November 11, 2013, or on or about November 8, 2013, or on or about December 9, 2013, or on or about July 25, 2014, as alleged. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to receive temporary disability benefits and permanent disability benefits. I affirm the deputy commissioner's finding that defendant's Iowa Code section 85.23 90-day notice defense is moot. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement from defendant pursuant to Iowa Code section 85.39 for the cost of Dr. Manshadi's IME. 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 issues.

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

ORDER

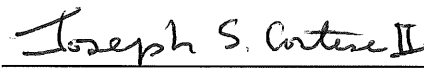
IT IS THEREFORE ORDERED that the arbitration decision filed on March 24, 2017, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall bear 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 10<sup>th</sup> day of August, 2018.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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