

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEANNE GARCIA,

Claimant,

vs.

JBS USA HOLDINGS, INC./JBS USA  
LLC/SWIFT PORK CO.,

Employer,

and

AMERICAN ZURICH INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 5063049

A P P E A L  
D E C I S I O NHead Note Nos: 1100; 1106; 1108.5;  
1803.1; 1803; 2502;  
5-9998

Defendants JBS USA Holdings, Inc./JBS USA LLC/Swift Pork Co., employer, and its insurer, American Zurich Insurance Company, appeal from an arbitration decision filed on April 19, 2018. Claimant Leanne Garcia responds to the appeal. The case was heard on March 2, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 23, 2018.

The deputy commissioner found claimant carried her burden of proof to establish she sustained an injury which arose out of and in the course of her employment with defendant-employer on September 23, 2016. The deputy commissioner found the permanent disability sustained by claimant as a result of the work injury extends beyond claimant's right lower extremity into her body as a whole. The deputy commissioner found claimant sustained 25 percent industrial disability as a result of the work injury, which entitles her to receive 125 weeks of permanent partial disability benefits commencing on January 28, 2017. The deputy commissioner found claimant is entitled to reimbursement from defendants in the amount of \$2,937.66 for the requested past out-of-pocket medical expenses itemized in the attachment to the hearing report. The deputy commissioner found claimant is entitled to payment by defendants for all future medical treatment necessitated by the work injury. The deputy commissioner found pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed on November 17, 2017, by Farid Manshadi, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$530.94.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried her burden of proof to establish she sustained a work-related injury on

September 23, 2016. Defendants assert the deputy commissioner erred in finding claimant's permanent disability resulting from the work injury extends beyond claimant's right lower extremity into her body as a whole. Defendants assert if it is found on appeal that claimant did sustain a work-related injury, it should be found that any permanent disability is confined to claimant's right lower extremity. In the alternative, defendants assert if it is found on appeal that claimant did sustain an injury to the body as a whole, the award for industrial disability should either be reduced substantially or reversed entirely. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for any of the requested past out-of-pocket medical expenses. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for any future medical treatment for the alleged injury.

Claimant 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 April 19, 2018, 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 claimant carried her burden of proof to establish she sustained a work-related injury on September 23, 2016. I affirm the deputy commissioner's finding that the permanent disability sustained by claimant as a result of the work injury extends beyond claimant's right lower extremity into her body as a whole. I affirm the deputy commissioner's finding that claimant sustained 25 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants in the amount of \$2,937.66 for the requested past out-of-pocket medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for all future medical treatment necessitated by the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendants for the cost of Dr. Manshadi's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$530.94.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 19, 2018, is affirmed in its entirety.

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the weekly rate of five hundred thirty-five and 05/100 dollars (\$535.05) commencing on January 28, 2017.

Defendants shall receive a credit for all benefits previously paid.

Defendants 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).

Defendants shall reimburse claimant in the amount of two thousand nine hundred thirty-seven and 66/100 dollars (\$2,937.66) for the out-of-pocket medical expenses itemized in the attachment to the hearing report incurred by claimant for treatment of the work injury.

Defendants shall pay for all reasonably necessary future medical treatment necessitated by the work injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of five hundred thirty and 94/100 dollars (\$530.94), and defendants 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 8<sup>th</sup> day of October, 2019.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Robert J. Legislador (via WCES)

Jennifer A. Clendenin (via WCES)