

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MYRA BRADWELL (f/k/a GREGORY HUGHES),

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE CO. OF NORTH AMERICA,

Insurance Carrier,  
Defendants.

File No. 5059782

A P P E A L

D E C I S I O N

Head Notes: 1403.30; 1803; 2402; 5-9998

Claimant Myra Bradwell, f/k/a Gregory Hughes, appeals from an arbitration decision filed on May 15, 2019, and from a ruling on application for rehearing filed on June 4, 2019. Defendants Quaker Oats Company, employer, and its insurer, Indemnity Insurance Co. of North America, respond to the appeal. The case was heard on September 19, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 3, 2018.

The deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of work-related tinnitus. While claimant pleaded an injury date of July 12, 2017, for his tinnitus, the deputy commissioner found December 31, 2013, is the correct injury date for that condition, because the deputy commissioner found claimant knew, or should have known, the nature, seriousness and probable compensable nature of the tinnitus on or before December 31, 2013. Because claimant did not file his petition in this matter until October 6, 2017, which is more than two years after December 31, 2013, the deputy commissioner found defendants proved their two-year statute of limitation defense pursuant to Iowa Code section 85.26(1), with the result that claimant is barred from any recovery in this matter. The deputy commissioner ordered defendants to reimburse claimant for the expense of the independent medical evaluation (IME) of claimant performed by Dr. Richard Tyler. 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 the correct injury date for claimant's tinnitus is December 31, 2013, and in failing to find the correct injury date is July 12, 2017. Claimant asserts the deputy commissioner erred in finding defendants proved their two-year statute of limitations defense, in finding claimant is barred from any recovery in this matter, and in failing to award claimant substantial industrial disability for his tinnitus. Claimant asserts the deputy commissioner erred in failing to tax defendants with claimant's costs of the arbitration proceeding.

Defendants assert 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 May 15, 2019, and the ruling on application for rehearing filed on June 4, 2019, 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 his burden of proof to establish he sustained permanent disability as a result of work-related tinnitus. I affirm the deputy commissioner's finding that while claimant pleaded an injury date of July 12, 2017, for his tinnitus, December 31, 2013, is the correct injury date for that condition, because I affirm the deputy commissioner's finding that claimant knew, or should have known, the nature, seriousness and probable compensable nature of the tinnitus on or before December 31, 2013. I affirm the deputy commissioner's finding that because claimant did not file his petition in this matter until October 6, 2017, which is more than two years after December 31, 2013, defendants proved their two-year statute of limitation defense pursuant to Iowa Code section 85.26(1), with the result that claimant is barred from any recovery in this matter. I affirm the deputy commissioner's order that defendants reimburse claimant for the expense of Dr. Tyler'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 those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 15, 2019, and the ruling on application for rehearing filed on June 4, 2019, are affirmed in their entirety.

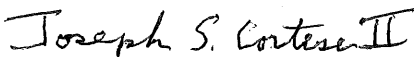
Claimant shall take nothing from these proceedings.

Defendants shall reimburse claimant for the expense of Dr. Tyler's IME.

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 28<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_  
JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Robert R. Rush      Via WCES

Kent M. Smith      Via WCES