

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RAUL MARTINEZ YANEZ,

Claimant,

VS.

RIUMALDO VAZQUEZ,

Employer,
Defendant,

File No. 5066714

APPEAL DECISION

Head Notes: 1402.10; 1402.30; 1403.30;
1802; 1803; 2001 2002; 2501;
2907; 3001; 3002; 5-9998

RAUL MARTINEZ YANEZ,

Claimant,

VS.

HUMBERTO TOLENTINO,

Employer,
Defendant.

File No. 5066714.01

APPEAL DECISION

Defendant Riumaldo Vazquez appeals from an arbitration decision filed on December 6, 2021, in File No. 5066714. Claimant Raul Martinez Yanez responds to the appeal. The case was heard on October 23, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 14, 2020.

On June 9, 2019, File No. 5066714, was consolidated with File No. 5066714.01, involving claimant and defendant Humberto Tolentino. The arbitration hearing for File No. 5066714.01 was held on June 9, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 16, 2021.

The deputy commissioner issued a combined decision for both cases on December 6, 2021. In that combined decision, the deputy commissioner dismissed File No. 5066714.01, finding defendant Tolentino did not owe any benefits to claimant based on the parties' June 23, 2021, stipulation that defendant Tolentino was not an employer

of claimant on July 5, 2018. The dismissal of File No. 5066714.01 has not been appealed.

In the arbitration decision, in File No. 5066714, the deputy commissioner found claimant met his burden of proof to establish he was an employee of defendant Vazquez at the time of the July 5, 2018, work injury. The deputy commissioner found claimant proved he sustained an injury on July 5, 2018, arising out of and in the course of his employment with defendant Vazquez. The deputy commissioner found claimant is entitled to receive healing period benefits from July 6, 2018, through August 31, 2018, at the weekly rate of \$616.27. The deputy commissioner found claimant is entitled to receive 140 weeks of permanent partial disability benefits, commencing on September 1, 2018, at the weekly rate of \$616.27, for the total loss of his left eye. The deputy commissioner found defendant Vazquez is responsible for the medical expenses set forth in Exhibit 1. The deputy commissioner ordered defendant Vazquez to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendant Vazquez asserts on appeal the deputy commissioner erred in finding claimant was an employee of defendant Vazquez at the time of the injury and not an independent contractor.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as 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 December 6, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned 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.

In File No. 5066714.01, I affirm the deputy commissioner's findings that claimant was not an employee of defendant Tolentino and that claimant shall take nothing from defendant Tolentino.

In File No. 5066714, I affirm the deputy commissioner's finding that claimant proved he was an employee of defendant Vazquez at the time of the July 5, 2018, injury. I affirm the deputy commissioner's finding that claimant proved he sustained an injury on July 5, 2018, arising out of and in the course of his employment with defendant

Vazquez. I affirm the deputy commissioner's finding that claimant is entitled to healing period benefits from July 6, 2018, through August 31, 2018, at the weekly rate of \$616.27. I affirm the deputy commissioner's finding that claimant is entitled to 140 weeks of permanent partial disability benefits commencing on September 1, 2018, at the weekly rate of \$616.27, for the total loss of his left eye. I affirm the deputy commissioner's finding that defendant Vazquez is responsible for the medical expenses set forth in Exhibit 1. I affirm the deputy commissioner's order that defendant Vazquez pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility, defendant Vazquez's credibility, and the credibility of the other witnesses. I find the deputy commissioner correctly assessed the credibility of all of the witnesses. While I performed a de novo review on appeal, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made by the deputy commissioner who presided at the hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding the credibility of any of the witnesses in this case.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 6, 2021, is affirmed in its entirety.

For File Number 5066714.01:

Claimant shall take nothing from defendant Tolentino.

For File Number 5066714:

Defendant Vazquez shall pay claimant healing period benefits from July 6, 2018, through August 31, 2018, at the weekly rate of six hundred sixteen and 27/100 dollars (\$616.27).

Defendant Vazquez shall pay claimant 140 weeks of permanent partial disability benefits commencing on September 1, 2018, at the weekly rate of six hundred sixteen and 27/100 dollars (\$616.27), for the total loss of claimant's left eye.

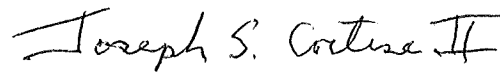
Defendant Vasquez shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant Vazquez is responsible for the medical bills set forth in Exhibit 1.

Pursuant to rule 876 IAC 4.33, defendant Vazquez shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, and defendant Vasquez shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant Vazquez shall file subsequent reports of injury as required by this agency.

Signed and filed on this 30th day of June, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mary Hamilton (via WCES)

William Habhab (via WCES)