

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

MAY - 9 2017

DARINKA MITRIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File Nos. 5043968; 5048334
WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30; 1802; 1803; 2500

Claimant Darinka Mitric appeals from an arbitration decision filed on December 9, 2015. Defendant Tyson Fresh Meats, Inc., employer, responds to the appeal. The case was heard on August 18, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 25, 2015.

In File No. 5043968, alleged injury date of September 27, 2012, the deputy commissioner found claimant failed to carry her burden of proof that she sustained cumulative trauma injuries to her bilateral shoulders arising out of and in the course of her employment as alleged. The deputy commissioner awarded claimant nothing in the way of weekly benefits, medical expenses or medical mileage. The deputy commissioner also ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5048334, stipulated injury date of November 20, 2012, the deputy commissioner found claimant failed to carry her burden of proof that she sustained any temporary disability or permanent disability as a result of the injury as alleged. The deputy commissioner awarded claimant nothing in the way of weekly benefits, medical expenses or medical mileage. The deputy commissioner also ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5043968, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained cumulative trauma injuries to her bilateral shoulders on September 27, 2012, as alleged. Claimant asserts the deputy commissioner erred in failing to award claimant temporary disability benefits and in failing to award permanent disability benefits. Claimant asserts the deputy commissioner erred in failing to award medical expenses and medical mileage. Claimant also asserts the deputy commissioner erred in failing to order defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5048334, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained any temporary disability or permanent disability as a result of the stipulated injury as alleged. Claimant asserts the deputy commissioner erred in failing to award claimant temporary disability benefits and in failing to award permanent disability benefits. Claimant asserts the deputy commissioner erred in failing to award medical expenses and medical mileage. Claimant also 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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 9, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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.

In File No. 5043968, I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained cumulative trauma injuries to her bilateral shoulders arising out of and in the course of her employment on September 27, 2012, as alleged. I affirm the deputy commissioner's finding that claimant is not entitled to an award of either temporary disability benefits or permanent disability benefits. I affirm the deputy commissioner's finding that claimant is not entitled to an award of either medical expenses or medical mileage. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

In File No. 5048334, I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained any temporary disability or permanent disability as a result of the stipulated injury as alleged. I affirm the deputy commissioner's finding that claimant is not entitled to an award of either temporary disability benefits or permanent disability benefits. I affirm the deputy commissioner's finding that claimant is not entitled to an award of either medical expenses or medical mileage. 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 all of those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of December 9, 2015, is affirmed in its entirety.

In File No. 5043968:

Claimant shall take nothing from these proceedings.

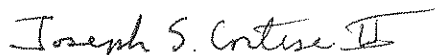
Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

In File No. 5048334:

Claimant shall take nothing from these proceedings.

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.

Signed and filed this 9th day of May, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

John S. Pieters Sr.
Attorney at Law
PO Box 2245
Waterloo, IA 50704-2245
johnsr@pieterslaw.com

Chris J. Scheldrup
Gregory M. Taylor
Attorneys at Law
PO Box 36
Cedar Rapids, IA 52406-0036
cscheldrup@scheldruplaw.com
gtaylor@scheldruplaw.com