

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL TAYLOR,

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,Insurance Carrier,  
Defendants.

File No. 5067394

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 2208; 2209; 2401;  
2402, 2802, 2907; 5-9998

Claimant Michael Taylor appeals from an arbitration decision filed on June 1, 2020. Defendants Quaker Oats Company, employer, and its insurer, Indemnity Insurance Company of North America, respond to the appeal. The case was heard on April 6, 2020, and it was considered fully submitted before the deputy workers' compensation commissioner on May 11, 2020.

The deputy commissioner found claimant carried his burden of proof to establish he sustained permanent cumulative injuries on April 1, 2015, which arose out of and in the course of his employment with defendant-employer, which include a low back injury, tinnitus and a high frequency hearing loss.

With regard to claimant's low back injury, the deputy commissioner found the manifestation date for that injury is April 1, 2015. Applying the discovery rule, the deputy commissioner found claimant should have known no later than January 25, 2017, that his low back injury was work-related and it was serious enough to have a permanent adverse impact on his employment. The deputy commissioner found that the statute of limitations for claimant's low back injury began to run by January 25, 2017. Because claimant did not file his petition in this matter until February 6, 2019, and because claimant was never paid any weekly benefits for his low back injury, the deputy commissioner found claimant's low back injury claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26(1). The deputy commissioner also found that because claimant did not provide defendants with notice of his low back injury claim until the petition was filed on February 6, 2019, claimant failed to give defendants timely notice of his low back injury within 90 days of the occurrence of that injury and the deputy commissioner found Iowa Code section 85.23 also bars claimant's claim for his low back injury.

With regard to claimant's tinnitus injury, the deputy commissioner found the manifestation date for that injury is April 1, 2015. Applying the discovery rule, the deputy commissioner found claimant should have known no later than May 2015 that his tinnitus was work-related and it was serious enough to have a permanent adverse impact on his employment. The deputy commissioner found that the statute of limitations for claimant's tinnitus injury began to run by at least May 2015. Because claimant did not file his petition in this matter until February 6, 2019, and because claimant was never paid any weekly benefits for his tinnitus injury, the deputy commissioner found claimant's tinnitus claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26(1). The deputy commissioner found defendants had actual notice of claimant's tinnitus injury as of the injury date, and the deputy commissioner found defendants failed to prove their Iowa Code section 85.23 90-day notice defense for claimant's tinnitus injury.

With regard to claimant's high frequency hearing loss, the deputy commissioner found the injury date for that injury is April 1, 2015. Applying the discovery rule, the deputy commissioner found claimant should have known no later than April 1, 2015, that his high frequency hearing loss was work-related and it was serious enough to have a permanent adverse impact on his employment. The deputy commissioner found that the statute of limitations for claimant's high frequency hearing loss began to run by April 1, 2015. Because claimant did not file his petition in this matter until February 6, 2019, and because claimant was never paid any weekly benefits for his high frequency hearing loss, the deputy commissioner found claimant's high frequency hearing loss claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26(1). The deputy commissioner found defendants had actual notice of claimant's high frequency hearing loss as of the injury date, and the deputy commissioner found defendants failed to prove their Iowa Code section 85.23 90-day notice defense for claimant's high frequency hearing loss.

Because the deputy commissioner found claimant's low back injury claim, his tinnitus injury claim, and his hearing loss claim are barred by the two-year statute of limitations contained in Iowa Code section 85.26(1), the deputy commissioner found claimant failed to prove entitlement to weekly benefits, medical benefits and alternate medical care.

The deputy commissioner also found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for an independent medical evaluation (IME).

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's low back injury claim, his tinnitus injury claim, and his hearing loss claim are barred by the two-year statute of limitations contained in Iowa Code section 85.26(1). Claimant asserts he should be awarded at least 60 percent industrial disability for his

low back injury, his tinnitus injury, and his hearing loss combined. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to medical benefits and alternate medical care. Claimant asserts the deputy commissioner erred by not ordering defendants to pay 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 June 1, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis 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 proved he sustained permanent cumulative injuries on April 1, 2015, which arose out of and in the course of his employment with defendant-employer, which include a low back injury, tinnitus and a high frequency hearing loss.

With regard to claimant's low back injury, I affirm the deputy commissioner's finding that the manifestation date for that injury is April 1, 2015. Applying the discovery rule, I affirm the deputy commissioner's finding that claimant should have known no later than January 25, 2017, that his low back injury was work-related and it was serious enough to have a permanent adverse impact on his employment. I affirm the deputy commissioner's finding that the statute of limitations for claimant's low back injury began to run by January 25, 2017. Because claimant did not file his petition in this matter until February 6, 2019, and because claimant was never paid any weekly benefits for his low back injury, I affirm the deputy commissioner's finding that claimant's low back injury claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26(1). I affirm the deputy commissioner's finding that because claimant did not provide defendants with notice of his low back injury claim until the petition was filed on February 6, 2019, claimant failed to give defendants timely notice of his low back injury within 90 days of the occurrence of that injury and I affirm the deputy commissioner's finding that Iowa Code section 85.23 bars claimant's claim for his low back injury.

With regard to claimant's tinnitus injury, I affirm the deputy commissioner's finding that the manifestation date for that injury is April 1, 2015. Applying the discovery

rule, I affirm the deputy commissioner's finding that claimant should have known no later than May 2015 that his tinnitus was work-related and it was serious enough to have a permanent adverse impact on his employment. I affirm the deputy commissioner's finding that the statute of limitations for claimant's tinnitus injury began to run by at least May 2015. Because claimant did not file his petition in this matter until February 6, 2019, and because claimant was never paid any weekly benefits for his tinnitus injury, I affirm the deputy commissioner's finding that claimant's tinnitus claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26(1). I affirm the deputy commissioner's finding that defendants had actual notice of claimant's tinnitus injury as of the injury date, and I affirm the deputy commissioner's finding that defendants failed to prove their Iowa Code section 85.23 90-day notice defense for claimant's tinnitus injury.

With regard to claimant's high frequency hearing loss, I affirm the deputy commissioner finding that the injury date for that injury is April 1, 2015. Applying the discovery rule, I affirm the deputy commissioner's finding that claimant should have known no later than April 1, 2015, that his high frequency hearing loss was work-related and it was serious enough to have a permanent adverse impact on his employment. I affirm the deputy commissioner's finding that the statute of limitations for claimant's high frequency hearing loss began to run by April 1, 2015. Because claimant did not file his petition in this matter until February 6, 2019, and because claimant was never paid any weekly benefits for his high frequency hearing loss, I affirm the deputy commissioner's finding that claimant's high frequency hearing loss claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26(1). I affirm the deputy commissioner's finding that defendants had actual notice of claimant's high frequency hearing loss as of the injury date, and I affirm the deputy commissioner's finding that defendants failed to prove their Iowa Code section 85.23 90-day notice defense for claimant's high frequency hearing loss.

I affirm the deputy commissioner's finding that because claimant's low back injury claim, his tinnitus injury claim, and his hearing loss claim are barred by the two-year statute of limitations contained in Iowa Code section 85.26(1), claimant failed to prove entitlement to weekly benefits, medical benefits and alternate medical care.

I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for an 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 all of the above issues.

ORDER

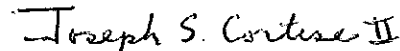
IT IS THEREFORE ORDERED that the arbitration decision filed on June 1, 2020, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to 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.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed on this 10<sup>th</sup> day of November, 2020.

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

The parties have been served as follows:

Casey Steadman (via WCES)

Timothy Wegman (via WCES)