

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSA PARRA DE VENTURA,

Claimant,

vs.

JBS USA, L.L.C.,

Employer,

AMERICAN ZURICH INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5056736

A P P E A L
D E C I S I O N

Head Note Nos: 1402.30; 1803; 2907;
5-9998

FILED
APR 15 2019
WORKERS' COMPENSATION

Defendants JBS USA, L.L.C., employer, and its insurer, American Zurich Insurance Company, appeal from an arbitration decision filed on November 7, 2017. Claimant Rosa Parra De Ventura responds to the appeal. The case was heard on May 10, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 2, 2017.

The deputy commissioner found claimant developed left shoulder symptoms simultaneously with her right shoulder, right elbow, right wrist, and right hand symptoms. The deputy commissioner further determined those injuries arose out of and in the course of claimant's employment with defendant-employer and manifested on October 24, 2014. The deputy commissioner found claimant sustained 50 percent industrial disability as a result the October 24, 2014, work injury and her prior work injury, for which defendants are entitled a credit of 125 weeks. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$463.44.

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 November 7, 2017, 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's left shoulder symptoms developed simultaneously with her right shoulder, right elbow, right wrist, and right hand symptoms. I affirm the deputy commissioner's determination that those injuries arose out of and in the course of her employment and manifested on October 24, 2014. I affirm the deputy commissioner's reliance on the opinions of Sunil Bansal, M.D., when making those determinations. More specifically, I affirm the deputy commissioner's finding that Dr. Bansal's opinions are more credible than the opinions of Benjamin Paulson, M.D., and Kyle Galles, M.D. I affirm the deputy commissioner's adoption of the findings and recommendations contained in claimant's second functional capacity evaluation. For those reasons, I affirm the deputy commissioner's finding that claimant sustained 50 percent industrial disability as a result of the October 24, 2014, work injury and the prior work injury, for which defendants are entitled a credit of 125 weeks. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$463.44.

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 November 7, 2017, is affirmed in its entirety.

Claimant is entitled to an industrial disability award totaling fifty (50) percent, or two hundred fifty (250) weeks of permanent partial disability benefits.

Defendants are entitled to a credit against this award equivalent to twenty-five (25) percent industrial disability, one hundred twenty-five (125) weeks of permanent partial disability benefits.

After their stipulated credit is applied, defendants shall pay claimant an additional one hundred twenty-five (125) weeks of permanent partial disability benefits commencing on October 24, 2014, at the stipulated weekly rate of three hundred seventy-nine and 11/100 dollars (\$379.11).

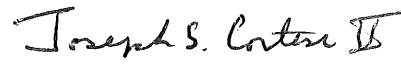
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 be entitled to the credits against this award as stipulated in the hearing report, and as stipulated in the hearing transcript at pages 10 through 11, specifically including the five (5) weeks of permanent partial disability benefits paid at the rate of three hundred eighty-six and 67/100 dollars (\$386.67).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of four hundred sixty-three and 44/100 dollars (\$463.44), 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 15th day of April, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

James C. Byrne
Attorney at Law
1441 – 29TH Street, Suite 111
West Des Moines, Iowa 50266
jbyrne@nbolawfirm.com

Patrick V. Waldron
Attorney at Law
505 Fifth Avenue, Ste. 729
Des Moines, IA 50309
pwaldron@pattersonfirm.com