

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BLANCA CABRERA,

Claimant,

vs.

TYSON FOODS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5055898

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1803; 2502;
5-9998

Claimant Blanca Cabrera appeals from an arbitration decision filed on March 12, 2018. Defendant Tyson Foods, Inc., self-insured employer, responds to the appeal. The case was heard on June 1, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 15, 2017.

The deputy commissioner found claimant failed to carry her burden of proof to establish that she sustained permanent disability as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant on April 22, 2014. Because the deputy commissioner found claimant failed to prove causation and compensability with regard to her alleged permanent disability, the deputy commissioner found the other issues raised in this matter are moot. The deputy commissioner found claimant is not entitled to reimbursement from defendant for the cost of the independent medical evaluation (IME) of claimant performed by Richard Kreiter, M.D., on May 2, 2017. 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 failed to carry her burden of proof to establish she sustained permanent disability as a result of the work injury. Claimant asserts the deputy commissioner erred in finding the other issues raised in this matter are moot.

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.

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 March 12, 2018, 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 failed to carry her burden of proof to establish she sustained permanent disability as a result of the April 22, 2014, work injury. I affirm the deputy commissioner's finding that the other issues raised in this matter are moot. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendant for the cost of Dr. Kreiter'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 March 12, 2018, is affirmed in its entirety.

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.

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

Signed and filed on this 13th day of November, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

William J. Bribresco Via WCES

Jason P. Wiltfang Via WCES