BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL MARTINSEN,

Claimant,

vs.

ENERGY MFG. CO., INC.,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT,

Insurance Carrier,
Defendants.

FILED
JUL 13 2018
WORKERS COMPENSATION

File No. 5058391

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Michael Martinsen. Claimant appeared telephonically and through his attorney, Christopher Spaulding. Defendants appeared through their attorney, Jordan Kaplan.

The alternate medical care claim came on for hearing on July 13, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibits A through C. Claimant provided testimony. No other witnessed were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an appointment with Meiying Kuo, M.D.

FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

Claimant sustained a right wrist injury on November 4, 2016. Defendants admitted liability for this injury and the current wrist condition for which claimant seeks alternate medical care.

On May 18, 2018, Deputy Workers' Compensation Commissioner Erin Q. Pals issued an arbitration decision in which she found that claimant sustained a 30 percent permanent functional impairment to his right arm as a result of his November 4, 2016 injury. (Arbitration Decision, page 3) Deputy Pals' finding was based, in part, on the opinion of Dr. Kuo, who was claimant's authorized treating physician at the time of the arbitration hearing. (Id.)

Over the course of claimant's treatment with Dr. Kuo, she performed three surgeries on claimant's wrist, the last of which occurred on July 3, 2017. (Id. at 2) The last time claimant was seen by Dr. Kuo for treatment was roughly 11 months ago in August of 2017. (Claimant Testimony) At that appointment, Dr. Kuo had no specific recommendations for future care of claimant's wrist, though she told claimant a wrist fusion may be an option should he continue to have symptoms. (Cl. Testimony)

After claimant was placed at maximum medical improvement and released from Dr. Kuo's care, defendants requested an opinion from Teri S. Formanek, M.D. (Arb. Dec., p. 2) In a report dated April 11, 2018, Dr. Formanek opined that claimant's treatment—three surgeries for a wrist sprain—was inappropriate. (Arb. Dec., p. 2; Cl. Exhibit 2).

On June 13, 2018, claimant communicated his desire to return to Dr. Kuo due to ongoing symptoms in his right wrist. (Cl. Ex. 1) In a response dated June 21, 2018, defendants indicated they would not authorize a return appointment to Dr. Kuo based on Dr. Formanek's opinion that her treatment of claimant's injury was inappropriate. (Cl. Ex. 2) Instead, defendants authorized a surgery consultation with Timothy P. Fowler, a hand and wrist specialist at the University of Iowa Hospitals and Clinics. (Defendants' Ex. C)

It is claimant's position that he is entitled to a return appointment with Dr. Kuo because defendants should not be allowed to terminate care with Dr. Kuo "midstream," especially in light of the fact that Dr. Kuo was a physician of defendants' choosing. Defendants point out that claimant has not received treatment from Dr. Kuo in nearly a year, and they assert their offer of an appointment with Dr. Formanek is reasonable in light of the opinion of Dr. Formanek.

Claimant testified that he has full confidence in Dr. Kuo and wishes to return to her because they have an established physician-patient relationship, but he acknowledged he does not have a problem with seeing Dr. Fowler for a second opinion.

In light of the fact that Dr. Kuo had no specific treatment recommendations when she released claimant from her care and claimant's testimony that he is not averse to a surgical consultation with Dr. Fowler, I find the care offered by defendants is reasonable. Although claimant suggests defendants are interfering with claimant's care by terminating claimant's relationship with Dr. Kuo, Dr. Kuo had nothing specific to offer claimant when he was released from her care, and claimant has not returned to her for treatment in nearly a year. Therefore, because there were no treatment recommendations on the table, I find there was no medical judgment with which to interfere.

Further, defendants' desire to redirect care to another physician is not without reason; it is based on claimant's testimony at the arbitration hearing that he continued to have significant problems with his wrist despite Dr. Kuo's three surgeries and Dr. Formanek's opinion that Dr. Kuo's treatment was inappropriate.

Dr. Fowler is an orthopedic surgeon specializing in hand and wrist care, and of great significance to me was claimant's concession that he has no qualms about seeing Dr. Fowler for a second opinion. For these reasons, I find the surgical consultation with Dr. Fowler is reasonable care.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528

N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. See Iowa Code § 85.27(4). Thus, by challenging the employer's choice of treatment and seeking alternate care, claimant assumes the burden of proving the authorized care is unreasonable. See Iowa Rule of Appellate Procedure 14(f)(5); Long, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In this case, based on the above findings of fact, I conclude claimant has not proven the care offered by defendants is unreasonable. Defendants are not interfering with the medical judgment of Dr. Kuo, and they are offering a surgical consultation with a qualified specialist. Because claimant failed to carry her burden to prove the care offered by defendants is unreasonable, claimant's petition for alternate medical care must be denied.

ORDER

Therefore it is ordered:

The claimant's petition for alternate medical care is denied.

Signed and filed this 13th day of July, 2018.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Christopher D. Spaulding
Attorney at Law
2423 Ingersoll Ave.
Des Moines, IA 50312-5214
chris.spaulding@sbsattorneys.com

Jordan A. Kaplan
Attorney at Law
1900 E. 54th St.
Davenport, IA 52807
jak@bettylawfirm.com

SJC/srs