

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

STEVE MEIER,  
Claimant,

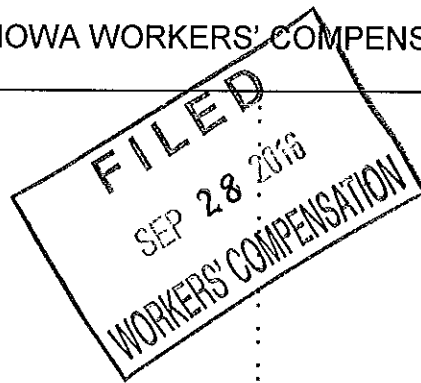
vs.

ALCOA INC.,  
Employer,

and

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,

Insurance Carrier,  
Defendants.



File No. 5052471

ALTERNATE MEDICAL  
CARE DECISION

HEAD NOTE NO: 2701

---

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Steve Meier.

This alternate medical care claim came on for hearing on September 27, 2016. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of defendants' Exhibits A through C and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for treatment of the upper extremities at the University of Iowa Hospitals and Clinics (UIHC) or with another health care provider.

## FINDINGS OF FACT

Defendants accept liability for a work-related injury to claimant's upper extremities on November 6, 2014.

Claimant filed a prior alternate medical care petition in April of 2015. In that petition, claimant sought alternate medical care for surgery to both upper extremities by a physician other than Tyson Cobb, M.D. Claimant's petition was denied, at that time, as defendants were in the process of attempting to find another physician, other than Dr. Cobb, to treat claimant.

Claimant testified he reached an agreement with defendants he would continue to treat with Dr. Cobb until another physician was located by defendants to treat claimant. In a professional statement, defendants' counsel indicated that attempts were made, to both the UIHC and Steindler Clinic in Iowa City, Iowa, to find another physician to take claimant's care. Defendants' counsel indicated no other physician, from those two facilities, would agree to take claimant's care.

Claimant had a carpal tunnel surgery with Dr. Cobb for the left arm in January of 2015. Claimant had a right carpal tunnel release, also with Dr. Cobb, in August of 2015.

On March 1, 2016, claimant was evaluated by Dr. Cobb for complaints of numbness in the right long finger and small fingers. Dr. Cobb noted an abnormal cervical MRI was suggestive of possible cervical spine involvement. He believed claimant's symptoms could be due to a cervical disc disorder, and an unspecified neuralgia and neuritis on the right. Treatment options, including revision carpal tunnel surgery and evaluation by a spine specialist were discussed. Claimant was released to return to work without restrictions. (Exhibit C, pages 3-5)

In an April 1, 2016 letter, Dr. Cobb found claimant at maximum medical improvement (MMI) on March 1, 2016. He requested defendants allow claimant to undergo a functional capacity evaluation (FCE) to be able to give a more accurate permanent impairment rating. (Ex. B)

In a July, 7, 2016 report, Dr. Cobb indicted claimant had undergone an FCE and had given valid effort. Based on findings from the FCE, and relying on the AMA Guides To the Evaluation of Permanent Impairment (5<sup>th</sup> Edition), claimant was found to have a 24 percent permanent impairment to the right upper extremity, and an 11 percent permanent impairment to the left upper extremity. This resulted in a combined 20 percent permanent impairment to the body as a whole. (Ex. C)

In a September 19, 2016 e-mail to claimant's counsel, defense counsel indicated defendants would authorize claimant to return to Dr. Cobb concerning claimant's fingers sticking to one another, and to determine what additional bilateral arm treatment is needed. (Ex. A)

Claimant testified his arms are worse since surgery. He said he has little strength in his arms. He said he has pain in his left elbow and tingling in both arms. Claimant testified he is not able to separate his ring and middle finger.

Claimant testified he does not trust Dr. Cobb. He testified he believes Dr. Cobb has put false statements into his medical records. Claimant testified he has reported Dr. Cobb to the medical board regarding treatment he has received from Dr. Cobb. He testified he does not know for certain, but assumes, Dr. Cobb is aware of his complaint with the medical board. He testified he has complained to Dr. Cobb's staff regarding misstatements in his medical records.

Claimant testified he feels he needs further treatment for symptoms in his arms but does not want to treat with Dr. Cobb. Claimant testified he refuses to have further treatment with Dr. Cobb.

Claimant testified that, in 2015, at the time he was treating with Dr. Cobb, he was also taking pain medications prescribed by a Dr. Sundar (no first name given). Claimant testified he was released from care by Dr. Sundar for failure to take pain medication as prescribed.

#### CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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.

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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Alternate care included alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

The record indicates there has been a breakdown in the patient/physician relationship and claimant needs to treat with another provider. Defendants have attempted to find other care for claimant in the Iowa City area, but have not been successful. It may be difficult for defendants to find an alternative physician for claimant, given that claimant has filed a complaint concerning Dr. Cobb, and has been dismissed from care by Dr. Sundar (References to Dr. Sundar in this decision are only added as evidence of defendants' difficulty with finding alternative care, and are not meant to question claimant's credibility).

The record indicates defendants have made an effort to find an alternative specialist to treat claimant. The record also indicates claimant should not, and will not, continue to treat with Dr. Cobb.

Based on this record, claimant's counsel shall provide defendants' counsel the names of other specialists to treat claimant, within ten days of the date of this decision. If, after receiving those names and conferring with claimant's counsel, defendants are unable, after 30 days of receipt of the names of physicians, to find an alternative specialist for claimant, claimant shall choose a provider to provide further treatment concerning his upper extremities injuries.

#### ORDER

It is ordered claimant's petition is granted, in part, and denied, in part. The parties shall proceed with locating an alternative specialist to treat claimant as described above.

Signed and filed this 28<sup>th</sup> day of September, 2016.

  
JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

James P. Hoffman  
Attorney at Law  
PO Box 1087  
Keokuk, IA 52632  
[jamesphoffman@aol.com](mailto:jamesphoffman@aol.com)

Valerie A. Landis  
Attorney at Law  
2700 Grand Ave., Ste. 111  
Des Moines, IA 50312  
[vlandis@hhlawpc.com](mailto:vlandis@hhlawpc.com)

JFC/sam