BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANE GRAMBLIN,

Claimant,

vs.

TERMINAL SOLUTIONS,

Employer,

and

THE CINCINNATI INSURANCE COMPANIES,

Insurance Carrier,
Defendants.

File No. 5068306

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

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, Shane Gramblin. Claimant appeared personally and through his attorney, Nicholas Shaull. Defendants appeared through their attorney, Matthew Phillips.

The alternate medical care claim came on for hearing on May 24, 2019. The proceedings were digitally recorded. Said 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. As such, 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 exhibit 1, which includes a total of 9 pages. The record also contains defendants' exhibits A-D, which contain 10 pages. All exhibits were received without objection. Claimant testified on his own behalf. He did not call any additional witnesses. Defendants called no witnesses. The evidentiary record closed at the conclusion of the alternate medical care hearing.

In filing his petition for alternate medical care, claimant seeks a second opinion with an orthopedic specialist.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of a second opinion by an orthopedic specialist.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Claimant, Shane Gramblin, sustained a work-related injury to his right shoulder. There is some dispute as to the specific date of injury. Defendants authorized care through McFarland Clinic. Claimant received conservative care consisting of physical therapy, injections, and medication. (Exhibit A, pages 1-4)

A May 21, 2018, MRI of the right shoulder revealed moderate tendinosis of the supraspinatus, without evidence of a tear. There was evidence of a prior subacromial decompression with distal clavicle excision. The labrum and biceps tendon were intact and unremarkable. (Ex. B, pp. 1-2).

On June 4, 2018, David Sneller, M.D., diagnosed claimant with right shoulder tendinitis and administered a subacromial injection. Diagnostic imaging revealed a fracture at the tip of the acromion. (Ex. C) Dr. Sneller opined claimant's shoulder was structurally sound. (Ex. A, p. 2)

On July 5, 2018, Dr. Sneller indicated no surgical intervention was necessary and released claimant to full duty. (Ex. A, pp. 2-4)

Claimant asserts he continued to experience pain and a progressive worsening of symptoms between July 2018 and March 2019. Most notably, claimant describes a loud, audible "catch" and "pop" occurs in his right shoulder whenever he attempts to lift his arm above shoulder height. Claimant asserts he experienced a considerable increase in pain while hammering overhead at work in March 2019. Claimant reported said increase in symptoms and requested a follow-up appointment with the McFarland Clinic. (Claimant's Testimony)

Claimant returned to McFarland Clinic on April 2, 2019. Diagnostic imaging revealed interval healing of a non-displaced acromial fracture. (Ex. D) He was placed on restricted duty, scheduled for physical therapy, and referred back to Dr. Sneller. (See Ex. A, p. 5) Dr. Sneller re-evaluated claimant on April 25, 2019, and ultimately released him back to full duty work. Dr. Sneller provided:

> There is nothing I can fix for him. His rotator cuff is intact, his biceps and labrum are intact. His fracture is healed. There is nothing I can do to improve his situation. Unfortunately, I cannot make his situation better with surgery. I discussed he is entitled to a 2nd opinion, but at this point, I

> have nothing further to offer him as far as any intervention to make his situation better.

(Ex. A, p. 18)

Dr. Sneller did not request an updated MRI of the right shoulder; however, on examination he found claimant's shoulder was stable, and there were no signs of weakness. (Ex. A, p. 5) Claimant asserts Dr. Sneller was brisk and dismissive at the April 25, 2019, appointment. (Ex. 1, p. 6)

Claimant submitted medical records, dated May 7, 2019, into the evidentiary record. According to claimant's motion to submit additional hearing exhibits, filed May 22, 2019, the aforementioned medical records refer claimant for a second opinion with Dr. Scott Meyer at Iowa Orthopaedics. At hearing, claimant testified he presented to his primary care provider, Hannah Carlsen, D.O. on April 29, 2019. Claimant asserts that the records contained in Exhibit 1, pages 8 through 9, confirm Dr. Carlsen referred claimant for a second orthopaedic opinion with Dr. Scott Meyer. The medical records contain no information with respect to Dr. Carlsen's findings on examination at the April 29, 2019, appointment. They do, however, show a referral was placed with Dr. Scott Meyer at Iowa Ortho for a second opinion.

Claimant testified he has ongoing pain and clicking in the right shoulder. Given his ongoing symptoms, claimant asserts there is still something wrong within his shoulder and he requests a second opinion. Defendants assert they have authorized and provided reasonable and prompt medical care for claimant's condition.

REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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 R. App. P 14(f)(5); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

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).

To establish a claim for alternative medical care, an employee must show that the medical care furnished by the employer is unreasonable. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Claimant seeks an order authorizing a second opinion with an orthopedic specialist. Claimant's rationale is logical and reasonable. Claimant continues to experience ongoing pain and discomfort in his right shoulder. Claimant asserts that Dr. Sneller's pronouncement that no further care is needed is tantamount to providing no care at all, and is per se unreasonable.

It is undisputed claimant continues to report right shoulder symptoms and desires a second opinion. In hopes of receiving such an evaluation, the claimant took steps in obtaining evidentiary support for such a request by presenting to his family physician, Dr. Carlsen. Although detailed medical records from the appointment are not in the evidentiary record, there is a record that expressly refers claimant to Dr. Meyer for an orthopaedic opinion. That being said, claimant did not submit an expert opinion criticizing the existing care provider's recommendations. It is possible claimant will obtain such an opinion from Dr. Meyer in the future; however, for the purposes of the pending alternate medical care petition, we are only concerned with the current evidentiary record. The only expert opinion in the evidentiary record is that of Dr. Sneller who provided that no further treatment is recommended or necessary.

Claimant produced no evidence to establish that the care offered by defendants to date has been inferior or less extensive than other available care. The evidentiary record establishes that claimant continues to have symptoms; however, the evidentiary record also establishes through unrebutted medical evidence that claimant is not a surgical candidate and that no further medical care is recommended.

Defendants have offered all reasonable medical care that has been recommended by a medical provider. Defendants have authorized follow-up visits when requested. No active treatment recommendations are pending. Defendants have not denied any recommended care at the present time because no further care is recommended. There is no evidence the authorized and evaluating physicians are

inadequately treating claimant. The authorized treating physician has simply declined to recommend further treatment.

Given that claimant continues to suffer with right shoulder complaints, Dr. Sneller's failure to recommend additional treatment is undoubtedly frustrating; and a referral for a second orthopaedic evaluation and/or an updated MRI is certainly reasonable. However, desirability of a certain course of action is not the legal standard utilized in alternate medical care proceedings. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Therefore, I conclude that claimant has failed to prove that the care offered by defendants has been unreasonable. Claimant has not carried his burden and for that reason his alternate care petition is denied.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is DENIED.

Signed and filed this 28th day of May, 2019.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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