

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JAMES VETETO,

Claimant,

vs.

CARGILL MEAT SOLUTIONS  
CORPORATION,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,  
Defendants.



File No. 5062046

MEMORANDUM OF  
ALTERNATE MEDICAL CARE

Head Note No.: 2701

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On June 5, 2017, claimant filed an application for alternate medical care under Iowa Code section 85.27 and rule 876 IAC 4.48. A hearing was held on June 21, 2017. All parties were given proper notice.

An offer of proof was made and is contained on a digital voice recording. The digital voice recording is not transcribed unless specifically requested for the purposes of appeal. There is no right of appeal of this decision to the workers' compensation commissioner. Appeal of this decision, if any, would be by judicial review pursuant to Iowa Code section 17A.19.

A complete decision was dictated into the record on the day of the hearing. The decision will be reproduced in typewritten form only if the decision is appealed, and the parties are advised to follow the procedures outlined under the administrative code.

Claimant sustained an injury on March 2, 2016, which allegedly arose out of and in the course of employment. Claimant was dissatisfied with the medical treatment offered by defendants. Defendants denied liability. Claimant asserted previous consent to provide care judicially estopped defendants from asserting a denial of liability. Based on Cooksey v. Cargill, Inc., File No. 3-615/12-1729 (Iowa Ct. App October 2, 2013), it was found that there had been no judicial acceptance of any admission of liability.


Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27 as more particularly described in rule 876 IAC 4.48 are not designed to adjudicate disputed compensability of a claim. Therefore, this action must be dismissed.

Defendants cannot deny liability and simultaneously direct the course of treatment. Barnhart v. MAQ Incorporated, Iowa Industrial Comm'r Report 16 (App. March 9, 1981).

IT IS, THEREFORE, ORDERED that this case should be and is hereby dismissed without prejudice.

IT IS FURTHER ORDERED that if claimant seeks to recover the charges incurred in obtaining care for a condition for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges.

Signed and filed this 22<sup>nd</sup> day of June, 2017.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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