BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LETICIA GAMBLETON, Claimant, vs. ARCONIC, INC. Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA (LIBERTY MUTUAL INSURANCE), Insurance Carrier, Defendants.	File No. 19700507.01 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, Leticia Gambleton.

The alternate medical care claim came on for hearing on November 6, 2019. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of testimony of the claimant, Lisa Travis-Hilbert, R.N., Claimant Exhibits 1 – 3 and Defendants' Exhibits A – F.

Claimant was self-represented at the hearing and defendants were represented by attorney Valerie Landis.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an MRI of claimant's right ankle and a second opinion by ORA Orthopedics (ORA) in Davenport, Iowa.

FINDINGS OF FACT

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

Defendants admitted liability for an injury occurring on August 28, 2019. Claimant hurt her right knee and ankle. Defendants have been providing care through occupational medicine and physical therapy. Claimant testified that her right knee has mostly recovered, although she does have some pain in her knee.

Claimant testified that she is still in a lot of pain in her right ankle. She is not able to use her right foot in her normal way in such things as using stairs and entering her pickup truck. Clamant testified that she has been in pain for over 10 weeks and wants to have a second opinion. Claimant testified that while she would like Dr. Cassel at ORA to provide the second opinion, she is willing to have other providers at ORA examine her ankle if Dr. Cassel is not available. Claimant believes there is something wrong with her ankle and wants an MRI to look for damage that does not show up on x-rays. The x-rays of her ankle are normal. (Exhibit 2)

Claimant is clearly frustrated with the slow progress of her healing and wants to be able to work like she did before the accident.

Claimant saw Naomi (Gunti) Chelli, M.D. once right after her injury. (Ex. A, page 1) Dr. Chelli is referred to in the exhibits as both Dr. Gunti and Dr. Chelli.

On August 28, 2019 claimant requested an MRI of her ankle form her employer. (Ex. B) On October 4, 2019 Teresa Franzen, P.A. consulted with Dr. Chelli about an MRI of claimant's ankle. Dr. Chelli did not believe that an MRI was warranted. (Ex. D)

Lisa Travis-Hilbert is a nurse who oversaw some of claimant's care. Ms. Travis-Hilbert testified that no doctor has recommended an MRI.

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); 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. Id. 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). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 Review-Reopening Decision June 17, 1986).

Claimant is still in pain from her August injury and frustrated by the lack of progress. She is concerned that there is a condition an MRI might reveal and wants ORA to evaluate her condition.

In this case the defendants are providing reasonable care. No physician has recommended an MRI. Absent a medical opinion that claimant needs additional care that the defendants are not providing, claimant has not met her burden of proof to show that the care provided by defendants is unreasonable.

ORDER

THEREFORE, IT IS ORDERED:

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

Signed and filed this 6th day of November, 2019.

James F. Elliott

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Valerie Landis (via WCES)

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