BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAREY SCHNEIDER, Claimant, vs. GKN ARMSTRONG RIM AND WHEEL, Employer, and ZURICH AMERICA INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED MAY 18 2017 WORKERS COMPENSATION File No. 5058779 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. Claimant sustained physical injuries in the employ of defendant GKN Armstrong Rim and Wheel. He now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call and fully submitted on May 18, 2017. The entire hearing was recorded via digital tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner, the undersigned was delegated authority to issue final agency action in the proceeding.

ISSUES

Liability is admitted on this claim. The sole issue presented for resolution is whether or not claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by the employer when he suffered injuries arising out of and in the course of employment.

Defendants have authorized care and it has been provided. The treating surgeon has recommended Dr. Curd or Mayo for a second opinion. Claimant desires treatment at Mayo. The defendants have provided care to the claimant and prefer to have the claimant follow-up with Dr. Curd.

CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

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., 562 N.W.2d at 433, 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.
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> [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" care 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.

An employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, Declaratory Ruling, File No. 866389 (May 18, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

The medical treatment provided by the defendants was not shown to be ineffective. The claimant has the burden of proving that the care authorized by the defendants has not been effective in treating his injury. The employer is permitted to choose the care provided. Defendants selecting one recommendation over another in a pick one of two situation is not unreasonable.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is denied.

Signed and filed this 18th day of May, 2017.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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