

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID HANSEN,

Claimant,

vs.

EXPRESS SERVICES, INC. d/b/a
EXPRESS EMPLOYMENT
PROFESSIONALS,

Employer,

and

NEW HAMPSHIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

JUL 25 2018

WORKERS COMPENSATION

File No. 5059635

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant David Hansen alleges he sustained injuries to his shoulder and back while working for the defendant, Express Services, Inc., d/b/a Express Employment Professionals ("Express"). On July 12, 2018, Hansen filed an application for medical care requesting T12 to L2 posterior fixation surgery recommended by authorized treating physician, David Beck, M.D.

On July 13, 2018, the Division of Workers' Compensation served a notice of telephone hearing, scheduling a hearing for July 25, 2018, at 8:30 a.m. A copy of the notice was served on Hansen, Express, and Express's insurance carrier, the defendant, New Hampshire Insurance Company ("New Hampshire").

A telephone hearing was held on July 25, 2018, at 8:30 a.m. Attorney Joanie Grife appeared by telephone conference call with her client, Hansen. Hansen testified during the hearing. Attorney Caroline Westerhold appeared on behalf of Express and New Hampshire. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding. Exhibits 1, 2, and A were admitted into the record.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Hansen sustained injuries to his shoulder and back while working for Express. (Hansen Testimony; Exhibit 1) Express and New Hampshire authorized Dr. Kim as the treating physician. (Ex. 1) Dr. Kim ordered magnetic resonance imaging of Hansen's spine. (Hansen Testimony, Ex. 1) Dr. Kim referred Hansen to David Beck, M.D., a neurosurgeon, for an evaluation.

On June 20, 2018, Hansen attended an appointment with Dr. Beck, complaining of severe back pain. (Ex. 1) Dr. Beck reviewed Hansen's magnetic resonance imaging and x-rays, and ordered an additional x-ray, noting the x-ray obtained that day "shows even more compression of the fracture at L1." (Ex. 1) Dr. Beck opined, "[i]t is my impression that David has an unstable compression fracture which is why I think he is getting worse. I recommend a [T]12 to L2 posterior fixation for this. I have tentatively scheduled him for surgery on July 6, 2018 pending work comp approval." (Ex. 1)

Express and New Hampshire refused to authorize the surgery recommended by Dr. Beck, the authorized treating physician. Express and New Hampshire have requested Hansen receive a second opinion to see if more conservative treatment would be beneficial.

Hansen testified he has had back pain since his work injury. (Hansen Testimony) Hansen reported his back pain has not improved over time. (Hansen Testimony) Hansen does not wish to obtain a second opinion before proceeding with surgery. (Hansen Testimony)

CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2017). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

HANSEN V. EXPRESS SERVICES, INC., D/B/A EXPRESS EMPLOYMENT
PROFESSIONALS

Page 3

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). The determination of whether care is reasonable is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Express and New Hampshire accepted Hansen's back injury, and sent Hansen to Dr. Beck for evaluation. Dr. Beck, the authorized treating physician, recommended back surgery. Hansen has requested back surgery recommended by Dr. Beck. Express and New Hampshire refused to authorize the surgery. For many years this agency has held that reasonable care includes care necessary to diagnose the condition, and that a defendant may not interfere with the medical judgment of its own treating physician. Berns v. CRST, File No. 5034602 (Alt. Care Aug. 27, 2012) (citing Cahill v. S & H Fabricating & Eng'r, File No. 1138063, (Alt. Care May 30, 1997); Hawxby v. Hallett Materials, File No. 1112821 (Alt Care Feb. 20, 1996); Leitzen v. Collis, Inc., File No. 1084677, (Alt. Care Sept. 9, 1996)). Express and New Hampshire are interfering with the medical judgment of Dr. Beck, the authorized treating physician.

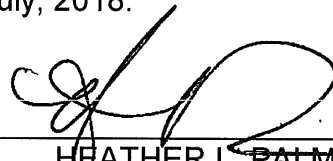
To date Express and New Hampshire have refused to authorize the back surgery recommended by Dr. Beck. Based on the evidence presented at hearing I find Express and New Hampshire have acted unreasonably by refusing to authorize the recommended surgery. Hansen's application for alternate care should be granted.

ORDER

THEREFORE IT IS ORDERED:

Hansen's application for alternate care is granted. Hansen is entitled to the surgery recommended by Dr. Beck.

Signed and filed this 25th day of July, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HANSEN V. EXPRESS SERVICES, INC., D/B/A EXPRESS EMPLOYMENT
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Page 4

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