BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| ZARAH CHRISTENSEN, | : | |
| Claimant, | : | File No. 22700519.02 |
| vs. | : | ALTERNATE MEDICAL CARE |
| AMAZON.COM, INC., | : | DECISION |
| Employer,<br>Self-Insured,<br>Defendant. | : | Head Note: 2701 |

## STATEMENT OF THE CASE

On June 7, 2022, the claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The claimant filed a notice of service pursuant to 876 Iowa Administrative Code 4.7, which indicated that the claimant attempted to serve the defendant on one occasion via certified mail. There is no proof that service was effectuated via certified mail; however, the United States Postal Service indicated that delivery was attempted. No one appeared or filed an answer on behalf of the defendant.

The undersigned presided over the hearing held via telephone and recorded digitally on June 20, 2022. That recording constitutes the official record of the proceeding pursuant to 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through her attorney, Shane Michael. No one participated on behalf of the defendant. The evidentiary record consists of Claimant's Exhibits 1-6. All of the exhibits were admitted and received into evidence.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code Chapter 17A is the avenue for an appeal.

## ISSUE

The issue under consideration is whether the defendant abandoned care, and whether the claimant is entitled to pursue medical care of her own choosing.

## FINDINGS OF FACT

Claimant, Zarah Christensen, alleges that she sustained an injury to her left knee, while working for defendant Amazon.com, Inc. (hereinafter "Amazon"), in Polk County, Iowa, on May 6, 2022. The defendant did not make an appearance or file an answer.

The claimant began working for Amazon in October of 2021. (Testimony). She unloaded trucks, sorted packages, and placed packages on pallets. (Testimony). In December of 2021, or January of 2022, her workload increased. (Testimony). This included lifting heavier packages. (Testimony).

On May 6, 2022, the claimant was lifting heavy packages onto a pallet. (Testimony). She lost her balance and twisted her left knee. (Testimony). She felt pain in her left knee but waited several days to see if the pain would dissipate. (Testimony). It did not. (Testimony). On May 13, 2022, she spoke to her supervisor and an Amazon safety manager about the incident. (Testimony). At that time, she requested care because the pain was affecting her performance. (Testimony).

The claimant testified that she told the Amazon supervisor and safety manager that she wanted medical treatment for the injury that she sustained on May 6, 2022. (Testimony). She further testified that the safety manager asked to see her knees. (Testimony). Upon examining the claimant's knees, the safety manager opined that she had not suffered a severe injury. (Testimony). The Amazon staff members gave no indication that Ms. Christensen would be sent for medical treatment; however, she was told that she could go to the first aid room for ice and Advil. (Testimony).

Since Amazon did not send Ms. Christensen for medical care, she sought out her own medical care on May 14, 2022. (Testimony). On May 14, 2022, she reported to UnityPoint Clinic Express Ankeny. (Exhibit 1). Anastasia Peterson, PA-C, examined her, and took the claimant off work until May 23, 2022. (Exhibit 1). Ms. Peterson recommended that Ms. Christensen stay off of her left knee, with minimal weightbearing for a week due to a knee strain. (Exhibit 1). According to Ms. Peterson, Ms. Christensen should slowly advance activity as tolerated after the initial week. (Exhibit 1). Ms. Christensen may also need to continue wearing a brace depending on her progression. (Exhibit 1).

On May 17, 2022, Christopher Ketter, D.O., recommended that the claimant wear a brace. (Exhibit 1). On May 20, 2022, Marc Molis, M.D., provided an opinion that Ms. Christensen suffered a knee injury. (Exhibit 1). Dr. Molis recommended an MRI, and that she continue to wear a knee brace with seated duty only. (Exhibit 1). Her restrictions persisted for two weeks. (Exhibit 1).

Amazon permitted Ms. Christensen to take leave as an accommodation starting on May 17, 2022, running to May 22, 2022. (Exhibit 4). This was unpaid. (Testimony).

It appears that Amazon provided an authorization for Ms. Christensen to visit Concentra in Des Moines, Iowa, on May 24, 2022. (Exhibit 2). This authorization expired on May 28, 2022. (Exhibit 2).

Ms. Christensen's attorney sent a letter to Amazon on May 25, 2022, expressing a displeasure with what they viewed as a lack of direction or authorization for care. (Exhibit 6).

On June 3, 2022, Ms. Christensen received an e-mail from a claims adjuster with Sedgwick indicating that they were the third-party administrator for Amazon. (Exhibit 5).

Dr. Ketter returned a form from Amazon indicating that Ms. Christensen could return to work on June 7, 2022, with restrictions from June 7, 2022, to August 1, 2022. (Exhibit 3). Ms. Christensen could not kneel, crawl, or squat. (Exhibit 3). She could walk for 4 hours per day, climb stairs for 1 hour per day, and climb a step stool for 2 hours per day. (Exhibit 3). Ms. Christensen could work up to 40 hours per week, but no more. (Exhibit 3). Ms. Christensen should wear her knee brace at all times. (Exhibit 3). Finally, Dr. Ketter noted that Ms. Christensen could lift and carry, and push and pull, up to 10 pounds for 8 hours per day. (Exhibit 3). Ms. Christensen provided this form to Amazon, who then accommodated the recommended restrictions. (Testimony).

On June 7, 2022, the claimant received a recommendation to attend physical therapy at Athletico one to two times per week for three to four weeks. (Exhibit 3).

Ms. Christensen agreed that she would have visited a doctor chosen by Amazon had they provided her with care. (Testimony). She believes that Amazon abandoned care by their refusal to offer care. (Testimony). She would like to continue her care with Dr. Ketter and seeks an order regarding the same. (Testimony).

## CONCLUSIONS OF LAW

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the

competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

The employer must furnish "reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003)(emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code section 85.27(4).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The Iowa Supreme Court has 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." Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

The claimant alleges that Amazon did not promptly offer care to treat her injury. More specifically, the claimant alleges that Amazon has abandoned care by not

promptly offering care. Accordingly, claimant seeks an order allowing her to direct her own medical care with Dr. Ketter.

Based upon the evidence, it appears that Amazon authorized a visit with Concentra; however, it does not appear that this information was properly conveyed to the claimant based upon the information in the record.

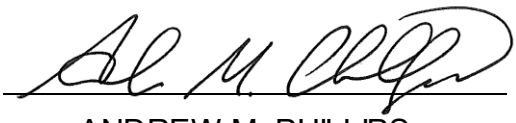
In light of the evidence in the record, it appears that the defendant has effectively abandoned care by never even offering care. Not offering care, based upon the evidence presented, is unreasonable. The defendant failed to timely provide medical care to the claimant. Claimant's request for continued care with Dr. Ketter is reasonable. Alternate care is granted with regard to designating Dr. Ketter as an authorized physician.

IT IS THEREFORE ORDERED:

1. The claimant's petition for alternate care is granted.

2. Dr. Ketter is designated as an authorized physician to provide ongoing care.

Signed and filed this 21st day of June, 2022.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jeffrey Lipman (via WCES)

Shane Michael (via WCES)

Amazon.com, Inc. (via regular and certified mail)
2300 Shiloh Rose Pkwy
Bondurant, IA 50035