

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD L. DRAPER,

Claimant,

vs.

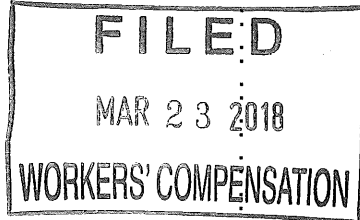
MENARD, INC.,

Employer,

and

XL INSURANCE AMERICA, INC.,

Insurance Carrier,
Defendants.



File No. 5061657

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, Richard Draper. Claimant appeared personally and through her attorney, Richard Schmidt. Defendants appeared through their attorney, Charles Blades.

The alternate medical care claim came on for hearing on March 23, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 1-3, which include a total of 6 pages. Claimant's exhibits were received without objection. Defendants did not offer a separate set of exhibits. Claimant testified on his own behalf. No other witnesses were called to testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to a cervical disc replacement surgery, which has been recommended by Timothy A. Burd, M.D.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Richard Draper sustained a neck injury while moving boxes during his employment activities for Menard, Inc., on December 12, 2017. He reported the injury to his employer the next day and was directed by the employer to seek treatment from a chiropractor of the employer's choosing. After three treatments, the chiropractor informed claimant that he could not provide beneficial care for claimant's neck condition. (Claimant's testimony)

Thereafter, the employer referred Mr. Draper to an occupational health clinic. Claimant sought treatment through the employer's choice of physician. The occupational medicine physicians ordered an MRI of claimant's neck and referred him to a surgeon, Timothy A. Burd, M.D. (Claimant's testimony)

Claimant describes constant pain in the back of his neck as well as pain and numbness radiating down his right arm to his right hand. Given these symptoms, Mr. Draper was not able to lay still long enough to complete the entire MRI process. However, he complied and submitted to the MRI on December 29, 2017 for as long as his symptoms would permit. Treatment was authorized by defendants through the surgeon, Dr. Burd. (Claimant's testimony)

After the MRI occurred, claimant submitted to evaluation and treatment by Dr. Burd. Dr. Burd recommended physical therapy. Upon claimant's return after a month of physical therapy, Dr. Burd recommended surgical intervention. (Claimant's testimony)

Claimant's Exhibit 3 is a copy of Dr. Burd's office note dated February 15, 2018. In that office note, Dr. Burd notes claimant's neck symptoms and the radiating symptoms down Mr. Draper's right arm. After reviewing the MRI with claimant and performing his physical examination on February 15, 2018, Dr. Burd recommended "proceeding with a total disc replacement from C5 through 7." (Claimant's Exhibit 3, p. 4) Dr. Burd also recommended that the surgery proceed at the earliest possible date. (Claimant's testimony)

Surgery was scheduled to occur on March 12, 2018. Four days before the surgery was scheduled, claimant received a call from the hospital noting that defendants had denied the surgery and that surgery had been cancelled. (Claimant's testimony) Claimant expressed his dissatisfaction through his counsel to defendants. (Claimant's Exhibits 1 & 2) Claimant testified he desires to proceed with the surgery recommended by Dr. Draper and claimant understands the proposed surgical procedure. (Claimant's testimony)

Defendants decline to authorize the recommended two-level cervical disc replacement surgery. Instead, defendants have scheduled a repeat MRI to occur next week and have scheduled claimant for evaluation with another surgeon on April 3, 2018. Defendants would like to further investigate the reasonableness of the surgical recommendation made by Dr. Burd. In essence, defendants are currently offering no care through their authorized treating surgeon and offer no evidence at the present time that the treatment recommended by Dr. Burd is unreasonable or unnecessary.

I find that all medical providers for Mr. Draper's injuries have been selected by defendants. Defendants authorized care through Dr. Burd. Dr. Burd has made surgical recommendations that are consistent with his expertise and that are reasonable. Defendants offer no basis to challenge the reasonableness of Dr. Burd's recommendations at this time.

I find that defendants are interfering with the treatment recommendations of their authorized surgeon by denying claimant's neck surgery. I further find that the defendants' cancellation of claimant's scheduled neck surgery was unreasonable and constitutes a denial of prompt and necessary medical care.

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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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 June 17, 1986).

Having found that the defendants selected and authorized Dr. Burd as the treating surgeon, I conclude that the defendants are not legally entitled to interfere with or second guess the medical recommendations made by Dr. Burd. Having found that the defendants' denial of the recommended surgery also caused an unreasonable delay and resulted in failure to provide claimant prompt and necessary medical care, I conclude that defendants' denial of the recommended surgery is not legally permissible. Instead, I conclude that claimant is entitled to the relief he seeks and specifically an order authorizing the disc replacement surgery recommended by Dr. Burd at Claimant's Exhibit 3, page 4.

ORDER

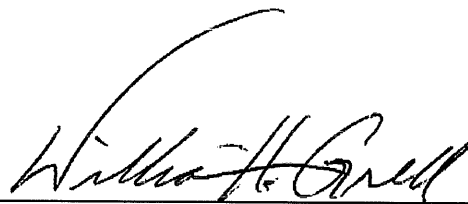
THEREFORE, IT IS ORDERED:

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

The cervical disc replacement surgery recommended by Dr. Burd is authorized and defendants will be responsible for the cost of that surgery and any treatment incidental thereto.

Within seven (7) days of the entry of this decision, defendants shall contact Dr. Burd, Nebraska Spine Clinic, as well as any hospital at which this surgery is to be performed by Dr. Burd and authorize said surgery to occur at the earliest convenient date and time.

Signed and filed this 23rd day of March, 2018.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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