BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SEAN CRANE,

Claimant,

vs.

DAVITA, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5068855

ALTERNATE MEDICAL CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On June 28, 2019, Sean Crane, the claimant, filed an application for alternate care under Iowa Code section 85.27 and rule 876 IAC 4.48. The defendants, employer DaVita, Inc. and insurance carrier New Hampshire Insurance Company, filed an answer on July 11, 2019. For clarity this decision will refer to the defendants collectively as DaVita.

The undersigned presided over an alternate care hearing conducted by telephone and recorded on July 12, 2019. That recording constitutes the official record of the proceeding. *See* 876 IAC 4.48(12). Crane participated personally and through attorney Eric Bair. DaVita participated through attorney Caroline Westerhold. The record consists of:

- Testimony at hearing by Crane;
- Claimant's Exhibits 1 through 2; and
- Defendants' Exhibits A through B.

ISSUE

The issue under consideration is whether Crane is entitled to alternate care under Iowa Code section 85.27 in the form of a magnetic resonance imaging (MRI) and possible follow-up exam as recommended by Shane Cook, M.D.

FINDINGS OF FACT

On January 6, 2018, Crane was working for DaVita when he injured his right arm. DaVita chose Dr. Cook to treat Crane's right arm. Dr. Cook performed an MRI on Crane's right wrist. He performed two surgeries on Crane:

1) March 16, 2018, on the right wrist; and

2) June 15, 2018, on the right elbow.

After an electromyography (EMG) in November 2018, Dr. Cook found Crane to be at maximum medical improvement (MMI) with respect to his right arm.

DaVita elected to have Crane undergo a functional capacity examination (FCE) in December 2018. The FCE spanned multiple days because of fluctuations in Crane's blood pressure and heart rate. Ultimately, the FCE was deemed invalid due to inconsistent performance.

Davis sent Crane to Ze-Hui Han, M.D., on January 31, 2019. Dr. Han provided no care. Crane's interaction with Han lasted about 15 minutes.

Crane received an impairment rating for his right arm sometime before May 2019.

Post-surgery, Crane has experienced symptoms in his right arm. Crane feels pain in his right wrist area, mainly on the outside of it, on a daily basis. (Exhibit 1, page 1; Testimony) He also has numbness in his right pinky and ring fingers through his forearm and elbow. Crane complains of cramping in his right arm. (Ex. 1, p. 1) He told Dr. Cook that activity over 25 pounds makes his symptoms worse. (Ex. 1, p. 1)

Crane requested that DaVita allow him to return to Dr. Cook because of his symptoms. DaVita authorized a follow-up exam. On May 2, 2019, Crane saw Dr. Cook, who performed a physical exam. Dr. Cook noted:

> Focused examination of the right upper extremity does show with fuss maneuver he does have pain and an audible click. There is no gross subluxation of the ECU tendon appreciated. His DRUJ is stable in neutral, supination and pronation. He does have foveal tenderness. Maximal point tenderness is over the ECU tendon at the distal ulna. Does have some pain with pisotriquetral manipulation. He has decreased sensation to the small finger and the ulnar aspect of the ring finger. He has a negative Wartenberg's and good strength with finger abduction.

(Ex. 1, p. 1)

Dr. Cook developed the following plan: "At this time I would like to move forward with an MRI of the wrist. After the MRI I will reevaluate him." (Ex. 1, p. 1) Crane asked DaVita to authorize the MRI.

DaVita contacted Dr. Han regarding the MRI. On May 16, 2019, Dr. Han opined:

> I do not see a specific reason for the MRI that was recommended by Dr. Shane Cook in the May 2, 2019 office note. I am not sure the pain that [Crane] is having is a new onset of symptoms or a continuation of the original problem. Per my last evaluation with [Crane] on January 31, 2019, I do not feel that any further medical treatment is needed at this time. This patient has ECU tendinitis and cubital tunnel symptoms should continue to improve over time.

(Ex. A, p. 3)

Crane's counsel sent Dr. Cook a check-box letter. (Ex. 1, pp. 2–3) Dr. Cook indicated agreement with the following via the letter:

1) His diagnoses of Crane is "[c]ontinued right wrist pain, post ECU sub-sheath reconstruction." (Ex. 1, p. 2)

2) His opinion "is that the right wrist pain and other symptoms in [Crane's] right wrist [Crane] described to [him] on May 2, 2019 are a continuation of [Crane's] original 1-6-18 work injury." (Ex. 1, p. 2)

3) Crane requires work restrictions at present because of the January 6, 2018 work injury. (Ex. 1, p. 2)

4) Crane requires an MRI of his right wrist and then reevaluation because of his work injury on January 6, 2019. (Ex. 1, p. 2)

Dr. Cook signed the completed check-box letter. (Ex. 1, p. 3) His signature is dated June 11, 2019. (Ex. 1, p.3)

Crane's attorney sent the check-box letter as completed and signed by Dr. Cook to defense counsel on or about June 13, 2019. (Ex. 2) In the accompanying letter, Crane requested authorization for the MRI recommended by Dr. Cook. (Ex. 2) In an email to Crane's attorney dated June 6, 2019, defense counsel stated:

> We previously produced copies of the reports and opinion of Dr. Han. In review, Dr. Han has advised that there is no basis for assignment of work restrictions given the invalid results of the FCE. As such, it is our position that there are no restrictions related to the work injury alleged. Dr. Han has also opined that a further MRI is unnecessary. Consequently, my client disputes the necessity of an MRI, at this time.

(Ex. B)

CONCLUSIONS OF LAW

"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)). Under the law, 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 § 85.27(4).

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 other care." *Id.* "Determining what care is reasonable under the statute is a question of fact." *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995); *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. *Long*, 528 N.W.2d at 124; *Gwinn*, 779 N.W.2d at 209; *Reynolds*, 562 N.W.2d at 436; *Long*, 528 N.W.2d at 124. 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 right to choose care does not authorize the employer to interfere with the medical judgment of its own treating physician. *Assmann v. Blue Star Foods*, File No. 866389 (Declaratory Ruling May 19, 1988); *Pote v. Mickow Corp.*, File No. 694639 (Review-Reopening June 17, 1986); *Martin v. Armour Dial, Inc.*, File No. 754732 (Arb. July 31, 1985); *Dietz v. Iowa Meat Processing*, File No. 757109 (Arb. July 20, 1985); *Cahill v. S & H Fabricating & Engineering*, File No. 1138063 (Alt. Care Decision, May 30, 1997); *Hawxby v. Hallett Materials*, File No. 1112821 (Alt. Care Decision, February 20, 1996); *Leitzen v. Collis, Inc.*, File No. 1084677 (Alt. Care Decision, September 9, 1996); *Boggs v. Cargill, Inc.*, File No. 1050396 (Alt. Care Decision, January 31, 1994). This may include relying on an IME report by a non-treating doctor that recommends treatment that is contrary to that chosen by the employer's chosen treating physician. *See Byers v. William Bros. Constr.*, File No. 5023178 (Alt. Care Decision March 11, 2010).

In the current case, Dr. Han saw Crane on one occasion, in January 2019 for an examination that lasted approximately 15 minutes. Subsequently, Crane's right-arm symptoms caused him to seek follow-up care with DaVita's chosen treating surgeon, Dr. Cook, which the defendants authorized. Based on his in-person physical examination of Crane, Dr. Cook recommended an MRI and follow-up exam.

Instead of approving the care recommended by the employer-chosen treating surgeon, DaVita went back to Dr. Han for an opinion on the MRI. Dr. Han opined that he is "not sure the pain that [Crane] is having is a new onset of symptoms or a continuation of the original problem" but nonetheless concluded that he does "not feel that any further medical treatment is needed at this time." (Ex. A, p. 3) In contrast, Dr. Cook opined that Crane's current symptoms are a continuation of his original work-related injury on January 6, 2018, and that Crane requires an MRI on his right arm and a post-MRI reevaluation because of that injury. (Ex. 1, p. 2)

Under the facts of the current case, *Byers* is persuasive. It is unreasonable for DaVita to rely on the opinion of Dr. Han, who is not an employer-chosen treating doctor, to refuse to authorize the care recommended by Dr. Cook, the employer-chosen treating surgeon, that is necessary to diagnose the cause of Crane's current symptoms.

ORDER

It is therefore ordered:

1) Crane's application for alternate care is GRANTED.

2) Crane is authorized to receive the MRI recommended by Dr. Cook and undergo a follow-up evaluation with Dr. Cook after the MRI.

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, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 12th day of July, 2019.

BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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