BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL CAMPBLIN,

Claimant,

vs.

CRST VAN EXPEDITED, INC.,

Employer,

and

AIG,

Insurance Carrier,
Defendants.

FILED

MAY 23 2017

WORKERS COMPENSATION

File No. 5051594

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, Paul Campblin.

The alternate medical care claim came on for hearing on May 22, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of Claimant's Exhibit 1, pages 1 and 2; Defendants' Exhibits A-C. Claimant alleges a date of injury of May 21, 2014. During the course of hearing, defendants admitted the occurrence of a work injury on May 21, 2014, and liability for the claim. Counsel offered oral arguments to support their positions; no witnesses testified.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Paul Campblin, sustained an injury arising out of and in the course of his employment with CRST Van Expedited, Inc. on May 21, 2014, to his back, neck, and head. (Alternate Care Petition) The relief claimant is seeking through his alternate

medical care petition is, that defendant refuses to authorize treatment for the claimant and claimant would like to see a physician or pain clinic for his pain. (Alt. Care Pet.; Exhibit 1) Defendants argue that claimant's actions constitute a refusal of reasonable medical treatment and therefore, his petition for alternate medical care should be denied.

The authorized treating physician in this case has been Glenn E. MacNichol, M.D. at Carolina Regional Orthopaedics. Dr. MacNichol has been treating claimant for pain management. On March 6, 2007, Dr. MacNichol sent a letter to Mr. Campblin which stated that because of Mr. Campblin's noncompliance with the controlled substance agreement the doctor would no longer be able to provide him with chronic pain management using controlled medicines such as opiods/narcotics. The doctor informed the Mr. Campblin that if he chose to find another pain provider the doctor would be able to provide him with emergency care, not including narcotic pain medicine, for the next 30 days. (Ex. 1, page 2) The doctor did not indicate that no further treatment was recommended.

On April 19, 2017, claimant's counsel sent a letter to defense counsel along with a copy of Dr. MacNichol's March letter. Claimant's counsel advised that Mr. Campblin needed another physician or pain clinic to see him for his pain. (Ex. 1, p. 2)

On May 12, 2017, defendants declined to authorize a different treating pain management specialist for claimant's work related condition. It is defendants' position that by authorizing Dr. MacNichol to provide treatment, they had discharged their obligation to provide such treatment. Defendants explained that the care being provided by Dr. MacNichol was reasonable and adequate to treat claimant's work related condition. Defendants argue that claimant's noncompliance with the controlled substance agreement, constituted an unreasonable refusal of the offered medical care on the part of the claimant. (Ex. A & B) Therefore, defendants declined to provide a different treating pain management physician. (Ex. C)

There is no evidence that defendants are offering any other treatment to the claimant. There is also no evidence that defendants have attempted to send claimant to another pain clinic. I find that claimant's actions do not constitute an unreasonable refusal of medical treatment. I find that the no care being offered by defendants is inferior to the care being sought by the claimant.

REASONING AND 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.
>
> [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.

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).

In the present case, defendants argue that claimant's "noncompliance with the controlled substance agreement" constitutes an unreasonable refusal of the offered medical care. An unreasonable refusal of medical treatment can result in benefits. Iowa Practice Series §15.3; Johnson v. Tri-City Fabricating & Welding Co., 33 Biennial Rep., Iowa Indus. Comm'r 179 (Appeal Dec. 1977) (Claimant's refusal of medical treatment was found unreasonable. Claimant was awarded normal healing period for an injury such as he suffered). The undersigned is not aware of any agency decision or

court case that has determined that noncompliance with a substance agreement constitutes an unreasonable refusal of the offered medical care. The workers' compensation law is to be construed in favor of the injured worker. Workers' compensation statutes are to be liberally construed in favor of worker and the worker's dependents. Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503 (Iowa 1981); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 192 (Iowa 1980). The statute's beneficent purpose is not to be defeated by reading something into the statute that is not there. Cedar Rapids Community School v. Cady, 278 N.W.2d 298 (Iowa 1979). I conclude that claimant has not refused treatment.

Furthermore, the undersigned is not aware of any authority that indicates that noncompliance with a substance agreement results in the claimant forfeiting their right to any treatment. Claimant is not seeking a specific type of treatment, such as narcotic medications. Rather, claimant is seeking authorization for any treatment with any physician or pain clinic. This is not a case where claimant has been refused treatment by several providers; rather, there has been one provider who has refused continued treatment. In response, defendants are offering no treatment. Defendants have not offered any evidence to show that they attempted to obtain any other treatment for the claimant with any other type of medical provider. I find that offering no treatment is inferior to treatment. Therefore, I find that defendants' offer of no authorized care is unreasonable. Claimant's petition for alternate medical care is granted.

While I conclude that defendants shall authorize treatment for the claimant I encourage all parties to ensure that the next treating physician be made aware of claimant's noncompliance so that the physician may make an informed decision about appropriate treatment.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize treatment for the claimant with a physician or pain clinic.

Signed and filed this 23rd day of May, 2017.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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