

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES DEAN,

Claimant,

vs.

ASSOCIATED MATERIALS, LLC,

Employer,

and

ZURICH AMERICAN INSURANCE,

Insurance Carrier,
Defendants.

File No. 1664120.01

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On August 13, 2020, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants failed to file an answer, nor did the defendants file an appearance.

The undersigned presided over the hearing held via telephone and recorded digitally on August 26, 2020. That recording constitutes the official record of the proceeding under 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through his attorney, Dustin Mueller. The defendants did not participate. Counsel for the claimant filed information indicating that the defendants were properly served multiple ways with the petition. Additionally, the defendants were notified via a notice of hearing. The record consists of testimony at hearing by the claimant, James Dean.

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 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to alternate care under Iowa Code 85.27(4) in the form of:

- 1) Authorization for care or treatment with a licensed psychiatrist or counselor.

FINDINGS OF FACT

Claimant, James Dean, sustained injuries to his right index, long, and ring fingers as the result of a work incident on April 23, 2019, which arose out of and in the course of his employment with Associated Materials, LLC. Neither defendant employer, nor their insurer appeared at hearing, and therefore no information was received regarding their stance on liability. The main injury noted during this proceeding was to the claimant's mental health.

Mr. Dean is a 42-year-old male employee of Associated Materials, LLC (hereinafter "Associated"). (Testimony). He has worked for Associated for four years. (Testimony). On April 23, 2019, he responded to a call regarding a machine chipping material. (Testimony). He began the repair process, but was unaware that the machine contained modifications, including a modified saw blade. (Testimony). Upon placing his hand into the machine, his hand came into contact with a rotating saw blade. (Testimony). The saw blade amputated his index, long, and ring fingers on his dominant right hand (Testimony). Pieces of his finger were collected, and he was taken to one emergency room; however, they did not have the proper staffing for his injury, so he was taken to the University of Iowa Hospitals where a hand surgeon attempted to reattach his index and long fingers. (Testimony). The reattachments were successful for a short time, but ultimately Mr. Dean's severed index and long fingers were amputated in subsequent surgeries, as they died. (Testimony). Within the span of one month after the incident, Mr. Dean required three surgeries. (Testimony). The employer covered all of his medical care related to the fingers. (Testimony).

Mr. Dean began to notice emotional difficulties after the amputation of his fingers. (Testimony). He notes that he drops items at least 10 times per day, which causes considerable frustration. (Testimony). He also cannot use tools anymore, and is now the "parts guy" at his employer. (Testimony). He can no longer perform high voltage electrical work because he lacks dexterity while wearing high voltage gloves. (Testimony). Mr. Dean reports that he loves working with his hands, and either cannot do it or tasks require a significant amount of time. (Testimony). Mr. Dean also notes a strain on his marriage, as he can no longer feel his wife with his right hand, and can no longer do things like helping his family by fixing their vehicles. (Testimony).

On May 14, 2020, Mr. Dean contacted the workers' compensation adjuster and/or nurse case manager (hereinafter "NCM") requesting examination by a mental health provider. Mr. Dean requested care again on May 25, 2020; June 17, 2020; and

June 30, 2020. (Testimony). The NCM continually indicated she would pass his concerns along to the adjuster. (Testimony). However, care was never arranged. (Testimony). In an attempt to spur the employer or insurer to provide mental health care, Mr. Dean indicated on July 28, 2020, that he would arrange his own care. (Testimony). He did not arrange care, nor did the defendants. (Testimony). The claimant is requesting care with either a counselor or licensed psychiatrist. (Testimony).

CONCLUSIONS OF LAW

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

For purposes of this section, the 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.

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. v. Gwinn, 779 N.W.2d 193, 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

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., 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. Long, 528 N.W.2d 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 claimant requests care via requiring defendants to authorize treatment with a licensed psychiatrist or mental health professional.

The claimant sustained a traumatic injury and reports mental health issues after sustaining the injury. These mental health issues include frustrations with activities of daily living, frustrations with his employment, and strain on his marriage. The claimant requested care from the defendants on five occasions dating back to May of 2020. Not authorizing mental health care, based upon the evidence presented is unreasonable. Based upon the evidence in the record, mental health care is reasonably necessary.

ORDER

IT IS THEREFORE ORDERED:

- 1) The claimant’s petition for alternate care is granted.
- 2) Defendants shall authorize care with a licensed psychiatrist.
- 3) Defendants retain the right to control care and select an appropriate licensed psychiatrist for care and evaluation of the claimant.

Signed and filed this 26th day of August, 2020.



ANDREW M. PHILLIPS
DEPUTY WORKERS’
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dustin M. Mueller (via WCES)

DEAN V. ASSOCIATED MATERIALS, LLC

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