BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL T. LAWSON,

Claimant,

vs.

ARCONIC,

Employer,

and

LIBERTY MUTUAL INSURANCE/, HELMSMAN MANAGEMENT SERVICES,

Insurance Carrier, Defendants.

File No. 5068823

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, Michael Lawson, who proceeded pro se. Defendants appeared through their attorney Valerie Landis.

The petition for alternate medical care came on for a telephone hearing on July 5, 2019. 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 contains Claimant's Exhibits 1 through 6 and Defendant's Exhibit A, pages 1-4. Claimant and Mr. Ron Hutt, claimant's union representative, provided testimony at hearing.

ISSUE

Whether claimant is entitled to alternate medical care.

Specifically, claimant seeks an order compelling defendants to authorize a second opinion evaluation with Dr. Jonathan Winston at ORA Orthopedics and any treatment he may recommend.

FINDINGS OF FACT

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

On June 24, 2019, claimant filed an application for alternate medical care concerning a left upper extremity injury that arose out of and in the course of employment with the defendant employer on or about January 9, 2019.

Defendants accepted the claim and provided authorized medical care.

Claimant received conservative care in January and February, 2019. (Ex. A, 2-3) On May 1, 2019, claimant underwent an MRI of his left forearm, which indicated "changes consistent with a partial tear of the biceps tendon at the radial insertion." (Ex. No. 1) Thereafter, claimant was referred by the employer to Suleman Hussain, M.D., at ORA Orthopedics for an evaluation. Claimant had an appointment with Dr. Hussain on May 10, 2019. Dr. Hussain issued his report on June 26, 2019. (Ex. A) He opined that the work injury was the cause of claimant's condition and recommended:

> [A] short period of immobilization, followed by a physical therapy course, potentially, also with a selective corticosteroid injections [sic]. If that fails, the patient would require intervention, for which, in this case, it would be a debridement and reattachment of his biceps tendon and potential evaluation and treatment of his lateral epicondylar discomfort, depending on how that responded to conservative measures."

(Ex. A-4)

Claimant testified that he saw Dr. Hussain for treatment according to his recommendations on or about July 3, 2019. At that time he was given in injection and placed in an immobilizer.

Claimant testified that he has no complaints concerning the treatment he has received from Dr. Hussain. He further testified that he has a follow-up appointment with Dr. Hussain and he plans to attend.

Claimant testified that he has not provided the employer or insurance carrier with any statement of dissatisfaction concerning his present care with Dr. Hussain.

Claimant's complaint relates to the length of time that occurred between the injury date and receiving treatment from Dr. Hussain.

Claimant also indicated a desire for a second opinion with Jonathan Winston, M.D., at ORA Orthopedics, because he believed Dr. Winston to be more qualified than Dr. Hussain, although no evidence was presented to support this belief and defendants disputed the same.

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).

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); 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). 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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.

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).

Claimant was frustrated with the length of time that occurred from the date of injury to the date he received treatment with Dr. Hussain.

I found above that claimant received initial care in January and February, 2019. Dr. Hussain was asked by letter dated March 1, 2019, to provide opinions including diagnosis, causation, and future medical care. (Ex. A, pp 1, 3) Claimant was then seen by Dr. Hussain on May 10, 2019. It is not clear why it took over eight weeks for claimant to be seen by Dr. Hussain. Nevertheless, claimant saw Dr. Hussain and received reasonable treatment and has a follow-up appointment, which he will attend. At the time of the hearing, claimant had no complaints about Dr. Hussain's care. Dr. Hussain has indicated that surgery may be needed at some point in the future, but none is recommended at this time.

Given claimant's satisfaction with Dr. Hussain's current medical care, and the reasonableness of the current treatment, I conclude that claimant has failed to carry his burden of proof that he is entitled to a second opinion at this stage with Dr. Winston. I further note that there is no medical recommendation for a second opinion and there is no proof in the record that Dr. Winston is better qualified to offer an opinion. Further, it is not clear what claimant seeks in this opinion, given that Dr. Hussain has given his opinion that the condition is work related and he has mapped out what seems to be a reasonable course of treatment and claimant has expressed no dissatisfaction with the treatment he has received from Dr. Hussain.

I conclude that the medical treatment offered by defendants at this time is reasonably suited to treat claimant's work injury.

Therefore, I conclude that claimant has failed to carry his burden of proof and his application for alternate care is denied.

ORDER

IT IS THEREFORE ORDERED that claimant's application for alternate medical care is denied.

Signed and filed this 8th day of July, 2019.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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