

FRANK WITHAM,	:	
	:	
Claimant,	:	
	:	
vs.	:	File No. 5011656
	:	
TACO BELL,	:	MEMORANDUM OF
	:	
Employer,	:	ALTERNATE
	:	
and	:	MEDICAL CARE
	:	
HARLEYSVILLE LAKE STATES	:	DECISION
INSURANCE,	:	
	:	
Insurance Carrier,	:	
Defendants.	:	HEAD NOTE NO: 2701

Claimant filed an original notice and petition on April 21, 2004 under rule 876 IAC 4.48 and Iowa Code section 85.27 for alternate medical care. The date set for the alternate medical care hearing was May 3, 2004 at 10:30 a.m. The parties were given proper notice on April 22, 2004.

The hearing was held as scheduled. Claimant was represented by Pete Leehey. Defendants were represented by Danita Grant. The record consists of claimant's exhibit A, pages 1 through 7. Defendants did not introduce any exhibits into evidence. Neither party called any witnesses.

The undersigned has been delegated authority to issue the final agency decision in this matter. Appeal of this decision, if any, would be by judicial review pursuant to Iowa Code section 17A.19, which was stated on the record at the time of the hearing.

Defendants' counsel, Danita Grant, admitted on the record at the time of the telephone hearing that claimant sustained an injury on July 27, 2003, which arose out of and in the course of employment with employer when claimant was putting away produce, lifting heavy boxes and afterwards was unable to move his right arm.

FINDINGS OF FACT

Claimant's counsel testified that claimant was treated by a Dr. Durand, who is an occupational medicine doctor, and by a Dr. Hart, an orthopedic surgeon. Counsel contended that these doctors have determined that claimant was at maximum medical improvement.

Nevertheless, claimant has continued to have significant pain and sought an independent medical examination from James V. Nepola, M.D., an orthopedic surgeon at the University of Iowa Hospitals and Clinics.

Dr. Nepola administered a steroid injection, which provided 100 percent relief of pain.

In addition, Dr. Nepola recommended a six-week course in physical therapy.

Defendants' counsel stated that the employer and insurance carrier at the time of this hearing had agreed to the treatment of Dr. Nepola and had authorized the physical therapy and was paying for the treatment that Dr. Nepola was recommending and, therefore, this action was premature.

Dr. Nepola wrote on March 29, 2004: "We plan to see him back in 6 wks. If he were to continue to have pain we would offer him a subacromial decompression. I do not believe that in his current condition he is at MMI from this injury. JVN/sns" (Claimant's Exhibit A, page 6)

CONCLUSIONS OF LAW

Iowa Code section 85.27, which provides for medical care at subparagraph 4 states:

4. 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.

It is the determination of this deputy at this point in claimant's treatment and medical care for this injury that defendants have complied with Iowa Code section 85.27.

The care of Dr. Nepola has been offered promptly, reasonably suited to treat the injury without undue inconvenience to Mr. Witham.

Therefore, no permanent change in medical care can be made at this time. However, claimant is authorized to continue his current medical care with Dr. Nepola for the six-week period (approximately) beginning on March 29, 2004 and claimant is entitled to have his medical condition re-evaluated by Dr. Nepola at that time.

ORDER

THEREFORE, IT IS ORDERED:

That claimant is authorized to seek the medical care and treatment of James V. Nepola, M.D., orthopedic surgeon at the University of Iowa Hospitals and Clinics for the six-week period recommended by Dr. Nepola on March 29, 2004 and to receive Dr. Nepola's re-evaluation of claimant's condition at that time.

Defendants' counsel stated that the employer and insurance carrier were already complying with this order and would continue to do so until Dr. Nepola's re-evaluation at the conclusion of the recommended six-week period that began on March 29, 2004.

This decision was dictated into the record on March 3, 2004 at the time of the alternate medical care hearing.

Pursuant to a standing order of delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, the undersigned enters this decision for the workers' compensation commissioner. There is no right of appeal of this decision to the workers' compensation commissioner. Review of this decision, if any, would be by judicial review pursuant to Iowa Code section 17A.19.

This memorandum of decision is for the purpose of this agency to record a summary of what transpired at the hearing as an administrative matter for the agency and as a matter of information for the parties to the hearing.

Signed and filed this 3rd day of May, 2004.

WALTER R. MCMANUS, JR.
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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