

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DREW BARKER,

Claimant,

vs.

MRC GLOBAL,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

FILED

DEC 23 2016

WORKERS COMPENSATION

File No. 5061174

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Drew Barker. Claimant filed a petition on December 12, 2016. He alleged at paragraph 5 of his petition:

Reason for dissatisfaction and relief sought: Failure to authorize second opinion orthopaedic referral to University of Iowa, Dr. James Nepola (see exhibits 1-10).

At the commencement of evidentiary hearing, claimant confirmed he requested the second opinion treatment with respect to an admitted left shoulder injury. Defendants admitted the occurrence of a left shoulder injury as alleged by claimant; a right shoulder injury has been denied by defendants.

The alternative medical care claim came on for hearing on December 22, 2016. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The evidentiary record consists of claimant's exhibits 1 through 10, defendants' exhibits A through D, and the testimony of the claimant. The parties did not submit hearing briefs.

ISSUE

The sole issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of a second opinion regarding treatment of claimant's left shoulder with Dr. James Nepola of the University of Iowa Hospitals & Clinics (UIHC).

FINDINGS OF FACT

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

Claimant suffered an admitted work related injury to his left shoulder on March 4, 2016. Defendants directed claimant for care with Ryan Dunlay, M.D. Dr. Dunlay performed left shoulder rotator cuff surgery on April 20, 2016. (Exhibit A-5, page 5) While claimant also alleged involvement of the right shoulder, by an opinion of June 3, 2016, Dr. Dunlay indicated he was unable to state to a reasonable degree of medical certainty that claimant's need for right shoulder treatment was causally related to an alleged work related injury. He noted a causal relationship was possible, but not certain. (Ex. A-6, p. 6) As a result of this opinion, defendants denied liability for claimant's right shoulder complaints.

Claimant continued to receive authorized treatment of his left shoulder by Dr. Dunlay. In November 2016, Dr. Dunlay informed claimant he had no additional treatment to offer, that claimant's symptoms were permanent, and he recommended proceeding with a functional capacity evaluation (FCE). (Claimant's testimony) Defendants arranged for the FCE to proceed in December 2016. (Ex. 3)

Claimant was displeased with this course of action and desired a second opinion on treatment options. Claimant testified he continued to suffer with symptoms of his left shoulder and left biceps, including stretching and pulling sensations, pain and weakness. (Claimant's testimony)

Claimant's counsel conferenced with Dr. Dunlay on November 21, 2016 regarding claimant's bilateral shoulder conditions. (Ex. 9)

On November 22, 2016, claimant presented to his personal medical provider, Dorothy Anderson, ARNP, regarding his ongoing bilateral shoulder complaints. Claimant expressed a desire for a second opinion. (Ex. 3) Following examination, Ms. Anderson issued a referral to the UIHC Orthopedics Department due to claimant's complaints of bilateral shoulder pain and decreased range of motion. (Ex. 2; Ex. 4)

Based upon the results of counsel's conference with Dr. Dunlay, during which Dr. Dunlay purportedly expressed agreement to a second opinion, and given Ms. Anderson's referral to UIHC, claimant's counsel authored a letter to defendants' counsel dated November 22, 2016. Counsel requested authorization of an orthopedic consultation at UIHC. (Ex. 1)

In response to claimant's request, on December 2, 2016, defendants contacted the office of Abdullah Foad, M.D. Defendants forwarded medical records for Dr. Foad's review and inquired if Dr. Foad would be willing to provide a second opinion regarding claimant's left shoulder injury and any need for additional medical treatment. (Ex. A-4, p. 4)

Defendants' counsel authored a letter to claimant's counsel dated December 5, 2016. By the letter, counsel confirmed defendants admitted liability for the left shoulder claim, but denied liability for claimant's right shoulder condition. Counsel further represented defendants were in the process of arranging for Dr. Foad to evaluate claimant regarding treatment options for the left shoulder. (Ex. 5) On December 7, 2016, defendants' counsel informed claimant's counsel an appointment with Dr. Foad had been scheduled for claimant on December 13, 2016 in Clinton, Iowa. (Ex. 6)

Also on December 7, 2016, Dr. Dunlay completed a check-the-box form drafted by claimant's counsel summarizing the content of the November 21, 2016 conference between counsel and Dr. Dunlay. (Ex. 9; Ex. 10) By this form, Dr. Dunlay confirmed discussion of opinions regarding causation of claimant's right shoulder condition and also "affirmed that, for [claimant's] piece of mind," that it would be "more than reasonable" to obtain a second opinion regarding his shoulder injuries. Dr. Dunlay also agreed that for the "sake of objectivity," it would be reasonable for a second opinion referral to come from claimant's primary care provider. (Ex. 9)

The following day, December 8, 2016, claimant's counsel authored a response to defendants' counsel and represented that claimant was unsatisfied with an offer of evaluation by Dr. Foad. The basis of the dissatisfaction was claimant's desire for an independent physician, as opposed to a physician who had provided him treatment in the past. Counsel indicated claimant would not attend the scheduled appointment with Dr. Foad and requested authorization of a second opinion with Dr. Nepola of UIHC, an appointment which had since been scheduled for January 30, 2017. (Ex. 7)

At evidentiary hearing, claimant explained he previously received treatment from Dr. Foad of a work-related left shoulder injury. At the time of Dr. Foad's treatment, claimant was in the employ of a former employer and was not employed by defendant-employer. Dr. Foad performed surgical repair of a rotator cuff tear in July 2011 and presided over a course of post-operative care into 2012. Claimant testified thereafter, he did not have problems with his left shoulder until suffering an acute rotator cuff tear on March 4, 2016 with defendant-employer. Claimant indicated that during his course of treatment with Dr. Foad in 2011 and 2012, he was not

dissatisfied with the care provided. However, claimant testified he does not wish to return to Dr. Foad for a second opinion, as he is concerned Dr. Foad may not be independent and objective regarding the condition of claimant's left shoulder. (Claimant's testimony)

On December 13, 2016, defendants' counsel authored responsive correspondence to claimant's counsel. Defendants' counsel declined to authorize a second opinion with Dr. Nepola, but again offered such an evaluation with Dr. Foad. Counsel represented a second opinion evaluation had been rescheduled with Dr. Foad on January 3, 2017. She explained that Dr. Foad would be performing a second opinion evaluation regarding treatment of the admitted left shoulder injury; additionally, Dr. Foad would evaluate claimant's right shoulder claim as part of an investigation which followed Dr. Dunlay's recent change in causation opinion. (Ex. A-1, p. 1)

On December 20, 2016, defendants' counsel authored a letter to claimant's counsel. The letter included copies of email correspondence from Dr. Dunlay's office, noting Dr. Dunlay found a referral to Dr. Foad acceptable. (Ex. B-1, p. 7; Ex. B-2, p. 8)

Claimant resides in Camanche, Iowa. (Claimant's testimony) Dr. Foad's practice is located in Clinton, Iowa, a distance of 2.6 miles from claimant's residence. Dr. Nepola's practice is located in Iowa City, Iowa, a distance of 83.9 miles from claimant's residence. (Ex. C-1, p. 9; Ex. D-1, p. 10)

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).

Iowa Code section 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.

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).

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 1975).

"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).

Claimant seeks an order authorizing a second opinion with Dr. Nepola on January 30, 2017, regarding treatment of claimant's left shoulder. Claimant argues a referral to Dr. Foad is inappropriate given his prior treatment of claimant's left shoulder, as well as questions of objectivity and confusion caused by evaluating the admitted left shoulder and denied right shoulder claims concurrently. Defendants argue Dr. Foad is a qualified physician who possesses relevant knowledge of claimant's medical history and thus, is well-suited to perform a second opinion evaluation. Further, defendants argue the care with Dr. Foad was offered promptly, noting the two scheduled appointments both were arranged prior to the evaluation claimant scheduled with Dr. Nepola, and Dr. Foad's practice is located less than 3 miles from claimant's residence.

It is undisputed claimant continues to report left shoulder symptoms and desires a second opinion evaluation. In hopes of receiving such an evaluation, claimant took appropriate steps in gaining evidentiary support for a request for a second opinion. Upon receipt of claimant's request for a second opinion, defendants acted promptly and diligently in arranging a second opinion evaluation with Dr. Foad.

While claimant would prefer evaluation by Dr. Nepola, it is defendants who possess the right to choose the provider of care. Claimant's dissatisfaction with a referral to Dr. Foad does not, alone, support an award of alternate care. There is no evidence Dr. Foad is unqualified or any legitimate indication Dr. Foad would not be objective in his evaluation of claimant. Upon receipt of a request for a second opinion, defendants promptly arranged for such an evaluation with Dr. Foad; each evaluation, notably, has been scheduled more promptly than claimant was able to schedule an evaluation with Dr. Nepola. Dr. Foad is an appropriately-qualified surgeon, having successfully treated claimant's left shoulder in the past and Dr. Dunlay expressed

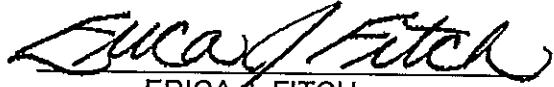
comfort with a referral to Dr. Foad. An evaluation by Dr. Foad is reasonably-suited to treatment of claimant's complaints. Finally, Dr. Foad's office is located significantly closer to claimant's residence, reducing any possibility of undue inconvenience to claimant in scheduling, evaluation or treatment. On these facts, it cannot be said that defendants have failed to provide claimant with reasonable medical treatment.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's request for alternate medical care is denied.

Signed and filed this 23rd day of December, 2016.


ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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