BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAURIE FLYNN, Claimant, vs. LENNOX INDUSTRIES, INC., Employer, and INDEMNITY INS. CO. OF N. AMERICA, Insurance Carrier, Defendants.	File No. 22003877.05 ALTERNATE MEDICAL CARE DECISION Head note: 2701

STATEMENT OF PROCEEDINGS

The above-captioned matter came before the undersigned on August 31, 2023, and was heard via telephone conference upon a petition for alternate medical care filed pursuant to Iowa Code section 85.27 on August 21, 2023, by Laurie Flynn, claimant, against Lennox Industries, employer, and Indemnity Insurance Company of North America, insurer, both as defendants. An answer was filed on August 30, 2023, accepting responsibility for the injuries for which claimant sought treatment.

The petition invokes summary procedures set forth in 876 IAC 4.48.

The claimant participated personally with her attorney, James Ballard, and defendants appeared through their attorney, Robert Gainer.

An oral decision was dictated onto the record and ordinarily only a memorandum confirming the decision would be issued. However, due to a malfunction in technology, no recording was made. As the record consisted of the statements of counsel and the written evidence, the parties agreed that no second hearing was necessary.

FINDINGS OF FACT

The claimant sustained an injury on October 6, 2021, which arose out of and in the course of her employment. As the result of this injury, she suffered symptoms of pain in her back. On May 17, 2023, her authorized treating physician, Dr. Chad

Abernathey, recommended further conservative care and directed her to return to her primary care providers for management of that care. (Claimant Exhibit 1) On June 13, 2023, Christa A. Seagle, DNP, referred claimant to a pain clinic. (CE 2) Claimant made that request known to defendants on June 5 and June 19, 2023. (CE 3) Having received no response, claimant filed a petition for alternate medical care on June 27, 2023. (See File No. 22003877.04) On July 10, 2023, the petition was dismissed as defendants agreed to provide such care. Id.

On June 10, 2023, defendants referred claimant to Central States Pain Clinic to be seen by Dr. Christian Ledet. (CE 4:7) On August 10, 2023, Dr. Ledet declined to accept claimant as a patient. (Statement of Defendants' counsel) On August 22, 2023, defendants forwarded the medical records to Pain Specialists of Iowa. (Defendants' Exhibit A) Pain Specialists of Iowa are reviewing the records. Id.

Because of a lack of response, claimant filed the present petition. At hearing, claimant requested that an order be entered requiring an appointment with a pain clinic to be set by September 14, 2023, and defendants agreed.

CONCLUSIONS OF LAW

As claimant is seeking relief in this case, claimant bears the burden of proof to show by a preponderance of the evidence that the offered medical treatment is not reasonably suited to treat the injury without undue inconvenience to the employee. See Lawyer and Higgs, Iowa Practice, Workers' Compensation, §15-4 and cases cited therein.

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, 526 N.W.2d 433 (Iowa 1997). Iowa Code section 85.27 provides, in relevant part:

> For purposes of this section, this 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 therefore, allow and order other care.

The question of reasonable care is a question of fact. An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical care. The employee has the burden of proving that the care chosen by the employer is unreasonable. Unreasonableness can

be established by showing 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. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Long v. Roberts Dairy Company, 528 N.W.2d 122 (Iowa 1955). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong, at 437.

At the present time, claimant has no appointment with a pain clinic despite the referral made on June 13, 2023; thus the current care provided by defendant employer is not effective. Claimant's petition is granted. Defendants shall set an appointment with a pain clinic by September 14, 2023.

THEREFORE IT IS ORDERED:

Claimant's petition for alternate care is granted and defendants are specifically ordered to set an appointment with a pain clinic by September 14, 2023.

Signed and filed this __31st___ day of August, 2023.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Ballard (via WCES)

Robert Gainer (via WCES)