BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CONNOR YOUNG, Claimant,	:	
vs.	:	File No. 5059099
THE DRILLER, LLC, Employer,	:	ALTERNATE MEDICAL CARE DECISION
and	:	
TRAVELERS CASUALTY AND SURETY CO., Insurance Carrier, Defendants.	:	Head Note No.: 2701

FILED
AUG 30 2017
WORKERS COMPENSATION

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, Conner Young.

The alternate medical care claim came on for telephone hearing on August 30, 2017. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of claimant's exhibits 1 and 2, defendants' exhibits A, B, and C, and claimant's testimony. Claimant referred to photographs for demonstrative purposes during the hearing.

ISSUE

The issue presented for resolution is whether the defendants should be ordered to provide a consultation from a vascular physician or a pain clinic physician to address claimant's pain issues related to his leg injury.

FINDINGS OF FACT

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

Defendants admitted liability for the work injury occurring on October 3, 2016 and the current condition for which claimant seeks alternate medical care.

Claimant seeks an order for alternate medical care compelling defendant to provide a consultation with either a vascular physician or a doctor practicing in the area of pain management to address his ongoing complaints related to his leg injury.

Claimant's October 3, 2016, work injury occurred in Wisconsin when he was struck by an excavator. Claimant testified that a doctor described the injury as one that "exploded his leg." (Testimony) The demonstrative photos referenced by claimant during the hearing depict the severity of the laceration injury to claimant's leg.

After the injury, claimant received treatment, at UWH Orthopedics, of UW Health in Madison, Wisconsin. (Ex. A) He underwent surgery with Dr. Lang and had his last follow-up treatment with Robin Hoenisch, PAC at UW Health in early January, 2017. (Testimony; Ex. A, pp. 2-3) At that time, Robin Hoenisch, PAC did not recommend any additional medical treatment and released claimant to return to work without restrictions indicating that he "may continue to progress" and that he was to "continue with all activities, as tolerated." (Ex. A, p. 2)

On March 7, 2017, Dr. Lang, responded to a letter from defense counsel and indicated that claimant had no impairment under the "6th Edition AMA Guides" (I note that Iowa relies on the 5th Edition) and stated that he anticipated no additional medical needs and assigned no permanent work restrictions. (Ex. B)

Claimant requested a second opinion due to ongoing complaints related to his injury. (Testimony) Defendants authorized a second opinion with Phinit Phisitkul, M.D., at the University of Iowa, Department of Orthopedics and Rehabilitation. On May 25, 2017 Dr. Phisitkul refers to a saphenous nerve block that was administered on April 17, 2017 "by Dr. Hall which provided minimal pain relief," and claimant's treatment with physical therapy. (Ex. 2, p. 1) Dr. Phisitkul notes that claimant "[c]ontinues to have 3/10 achy type pain in the posterior and medial calf. His pain and swelling increase throughout the day," and the swelling also causes hypersensitivity. (Id.) Claimant was also noted to be walking with a limp. (Id.) He recommended that claimant use custom insoles and compression stockings. (Ex. 2, p. 2)

On July 26, 2017, Dr. Phisitkul authored a letter stating that on May 25, 2017, he "recommended compression stockings for swelling and custom insoles for bilateral pes planus and left sided planovalgus deformity." (Ex. C) Dr. Phisitkul then stated that claimant may need to wear the stockings and orthotics as often as every day for several years and perhaps indefinitely, adding that the compression stockings should be worn at least four to six hours per day. He concluded that "we see no need for Mr. Young to return to [the] clinic." (Id.)

Claimant stated that he originally had compression stockings following surgery, but they became unusable because of his wound leakage and the damage caused to the stockings. Claimant had not worn compression stockings since the time that Dr. Phisitkul recommended them in May, 2017 until a few days prior to the hearing. (Testimony) Claimant testified that he received new stockings in the mail on the weekend previous to the hearing (which occurred on a Wednesday morning) so he had only worn them for two days. He did not find them to be particularly helpful, but agreed that he had only been wearing them a short time. (Testimony) Claimant stated that he was initially not aware that Dr. Phisitkul had recommended that he wear compression stockings, which claimant offered as an explanation why he did not obtain them until very recently. It was not clear from the evidence presented when defendants became aware that claimant's original pair of compression stockings were discarded relative to Dr. Phisitkul's recommendation that claimant wear compression stockings in May, 2017 and claimant's receipt of new compression stockings in late August, 2017.

I find that given the brief use of the compression stockings at the time of the hearing, that it cannot yet be said that they are ineffective.

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); 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.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

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 question for determination is not whether the medical care that claimant seeks is reasonable, but whether the care defendants are providing is unreasonable as determined by statute and interpreted by applicable case law.

In this case the claimant has not proven that the care offered by defendants is unreasonable. Claimant received initial medical care and was released by the authorized provider without any additional care recommended. Claimant requested a second opinion, which was authorized by defendants and claimant received additional treatment with Dr. Phisitkul, who has now also released claimant with no additional recommendation for medical care, other than use of compression stockings and orthotic inserts. Claimant makes no complaint that claimant has failed to provide the care recommended by the authorized providers.

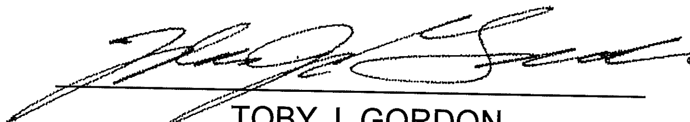
Defendants are providing the recommended care of the authorized treating physician, Dr. Phisitkul, and there is no clear evidence that the care has not been prompt, was inconvenient or was not reasonably suited to treat the injury. Also there are no contrary medical opinions indicating that the care defendants have authorized is otherwise unreasonable or that some form of alternate care as requested by claimant is more appropriate or potentially more effective, such that the present care offered by defendants may be seen in comparison as unreasonable.

There is no doubt that claimant had a significant leg injury and his testimony that he continues to have some symptoms related thereto was unrebutted. However, based on the evidence before me and particularly the lack of any contrary medical opinions to those of Dr. Lang and Dr. Phisitkul, and in view of the fact that defendants appear to be providing all of the presently recommended medical care, I conclude that claimant has failed to carry his burden of proof.

ORDER

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

Signed and filed this 30th day of August, 2017.



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