

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANNY K. COONLEY,

Claimant,

vs.

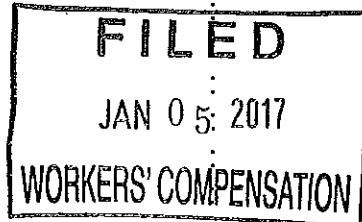
WILKEN & SONS, INC.,

Employer,

and

MIDWEST FAMILY MUTUAL INS. CO.,

Insurance Carrier,
Defendants.



File No. 5051567

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, Danny Coonley. Claimant appeared personally and through his attorney, Christoph Rupprecht. Defendants appeared through their attorney, Garrett Lutovsky.

The alternate medical care claim came on for hearing on January 5, 2017. 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 consists of claimant's exhibits 1-3, which include a total of six pages. The record also contains defendants' exhibits A-C, which cumulatively contain nine pages. No witnesses were called to testify live. Counsel for the parties provided cogent and helpful arguments.

In their answer and at the commencement of hearing, defendants denied liability for claimant's alleged neck injury. The parties were notified at the commencement of hearing that the undersigned does not have jurisdiction and will be dismissing the neck

injury alternate medical injury claim. Hearing proceeded only on the admitted shoulder injury claim.

ISSUE

The issue presented for resolution is whether the claimant is entitled to additional shoulder injections and physical therapy, as recommended by William R. Boulden, M.D.

FINDINGS OF FACT

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

Danny Coonley, claimant, alleges injuries to his neck and right shoulder arising out of and in the course of his employment with Wilken & Sons, Inc., on October 13, 2014. Defendants admit that claimant sustained a right shoulder injury of some kind, though they assert that the specific diagnosis of the condition is not yet resolved or determined among the various medical providers. However, defendants deny liability for the alleged neck injury.

Following the alleged injury, defendants denied liability for all conditions. Claimant sought medical care through providers of his own choosing and has obtained extensive medical care for the neck and right shoulder to date.

With respect to the right shoulder, claimant has been evaluated and treated by Arnold Delbridge, M.D. Dr. Delbridge ordered a right shoulder MRI, which was performed on August 18, 2015, and demonstrated a contusion of the humeral head and some edema in the muscles around claimant's right shoulder. Dr. Delbridge treated claimant's condition conservatively with medications and an injection. (Ex. 1, pp. 1-2)

Mr. Coonley was later referred to a pain specialist, Tejinder S. Swaran Singh, who performed a trigger point injection in claimant's lavatory scapular and trapezius area. Claimant was provided physical therapy and medication. Claimant's symptoms improved but did not resolve and have returned. (Ex. A)

Dr. Singh opined in a report signed December 5, 2016 that claimant has likely achieved maximum medical improvement and that no further treatment is recommended for claimant's right shoulder injury. (Ex. B)

Mr. Coonley also obtained an independent medical evaluation, performed by Farid Manshadi, M.D., on December 5, 2016. Dr. Manshadi opined that claimant sustained a brachial plexus neuropathy. However, Dr. Manshadi also opined that claimant had achieved maximum medical improvement for this injury as of October 10, 2016. He recommended no further treatment for the right shoulder or brachial plexus. (Ex. C)

Defendants obtained an independent medical evaluation, performed by William R. Boulden, M.D., on December 7, 2016. (Ex. 1) Dr. Boulden opined that claimant has a "suprascapular bursitis/tendinitis of the levator scapular rhomboid major muscles of the right shoulder blade." (Ex. 1, p. 3) Dr. Boulden recommended repeat injections in this area as well as physical therapy, focusing on massaging and pressure point treatments. (Ex. 1, p. 4) Dr. Boulden issued a supplemental report on December 16, 2016, confirming that he continues to recommend injections and physical therapy for claimant's right shoulder condition, despite such treatments having been attempted previously. (Ex. 3)

During the hearing, the undersigned asked counsel for defendants what treatment defendants are currently offering to claimant for his right shoulder condition. Defendants' position is that claimant requires no further treatment and that no further shoulder treatment is reasonable or necessary. Defendants are not currently offering claimant any treatment for his right shoulder.

Claimant has identified alternate or additional treatment that can be attempted for his right shoulder condition, albeit from defendants' independent medical evaluator. However, claimant does not wish for care to be transferred to Dr. Boulden due to the distance of travel between claimant's home and Dr. Boulden's office. Claimant has no alternate physician that is prepared to attempt the treatment options recommended by Dr. Boulden.

Ultimately, I find that defendants are not offering any treatment for claimant's right shoulder. I find that Dr. Boulden has identified a potential different diagnosis than the other medical providers in this case and is recommending a different treatment option for claimant's right shoulder. I find Dr. Boulden's recommended treatment option to be superior and more extensive than the current treatment (nothing) being offered by defendants. There is no evidence that the treatment recommended by Dr. Boulden is experimental, dangerous, or poses any significant risks. Given the potential benefits of the treatment as opposed to the minor risks that appear to be presented, I find the treatment recommended by Dr. Boulden is reasonable and necessary.

REASONING AND CONCLUSIONS OF LAW

Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of claim.

The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where

the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed.

.....
Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

.....
Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003).

Given the denial of liability for the claimant's neck condition, claimant's original notice and petition for alternate medical care must be dismissed. Given their denial of liability for the neck condition, defendants lose their right to control the medical care claimant seeks during their period of denial and the claimant is free to choose that care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the alleged neck injury, claimant may obtain reasonable medical care from any provider for his neck, but must do so at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment of claimant's alleged neck injury during their period of denial.

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 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. Long v. Roberts Dairy Co., 528

N.W.2d 122 (Iowa 1995). 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).

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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Having found that defendants are not offering any additional treatment for the right shoulder and having found that alternate medical care is available with what appears to be minimal risks, I also found that claimant proved the requested care was superior and more extensive than the care, or lack of care, being offered by defendants. Offering no further care when additional treatment options are available at minimal risk is not offering care that is reasonably suited to treat the injury. Therefore, I conclude that claimant has proven entitlement to an order for alternate medical care to pursue the recommendations made by Dr. Boulden.

On the other hand, claimant resists transfer of care to Dr. Boulden because it is unduly inconvenient for claimant to travel from his residence to Dr. Boulden's office for care. The undersigned does not have the power, authority, or jurisdiction to order a physician to perform medical procedures over which the physician does not agree are medically reasonable and necessary. Therefore, the undersigned cannot unilaterally select a physician closer to claimant's residence to perform the care recommended by Dr. Boulden. Neither party has proposed a physician closer to claimant's residence to assume care and perform the treatment recommended by Dr. Boulden. Given this set of facts, the undersigned has limited options as far as an order for further care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is dismissed with respect to his claim for treatment of his neck.

If claimant seeks to recover the charges incurred in obtaining care for the alleged neck injury, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

The claimant's petition for alternate medical care is granted in part with respect to claimant's request for treatment of his right shoulder.

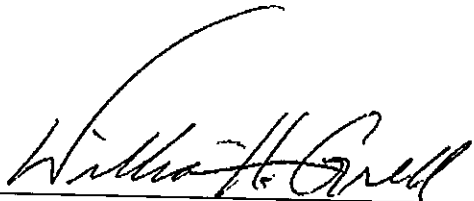
If he will accept care of claimant's right shoulder, claimant's medical care is transferred to William R. Boulden, M.D.

Defendants shall contact Dr. Boulden within seven (7) days of issuance of this decision to inquire about his willingness to assume care and shall select the earliest reasonable appointment date for Dr. Boulden to evaluate and commence treatment of claimant's right shoulder.

If Dr. Boulden will not accept care, defendants are ordered to find a physician within a fifty (50) mile proximity of claimant's home that is willing to accept care and attempt the treatment regimen, or offer some similar medical treatment, as recommended by Dr. Boulden.

Any physical therapy recommended by Dr. Boulden (or by another physician assuming care) should be performed at a facility within fifty (50) miles of claimant's residence.

Signed and filed this 5th day of January, 2017.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Christoph Rupprecht
Attorney at Law
PO BOX 637
Cedar Rapids, IA 52406-0637
christoph@rushnicholson.com

Garrett Lutovsky
Attorney at Law
1350 Woodmen Tower
Omaha, NE 68102
glutovsky@ekoklaw.com

WHG/kjw