BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENTRY SALTZMAN, Claimant, vs. WOODWARD-GRANGER COMMUNITY SCHOOL DISTRICT, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5067206 5067207 5067208 AMENDED AND SUBSTITUTED ALTERNATE MEDICAL CARE CONSENT ORDER

FILED
MAY 28 2019
WORKERS COMPENSATION

On May 16, 2019, the undersigned entered a consent order concerning two petitions for alternate medical care. The two petitions involved claimant's back with injury dates of April 17, 2018 and October 2, 2018, in File Nos. 5067207 and 5067208.

On May 17, 2019, claimant filed a motion for order nunc pro tunc in File No. 5067206, which related to an ankle claim and for which there was no petition for alternate medical care, and File Nos. 5067207 and 5067208, which involved the consent order described above.

Claimant's motion for order nunc pro tunc correctly points out that the undersigned did not specifically include in the consent order that defendants admitted liability for the injury dates of April 17, 2018 and October 2, 2018 in File Nos. 5067207 and 5067208 regarding the back.

More than 10 days have passed since the motion was filed, and no resistance is on file.

The motion's inclusion of File No. 5067206, was likely inadvertent, and is denied <u>only</u> as to File No. 5067206.

I find that claimant's motion for order nunc pro tunc should be granted concerning File Nos. 5067207 and 5067208, and that the second paragraph of the Alternate Medical Care Consent order entered May 16, 2019, should be amended to include the underlined portion below and read as follows:

> At the time of the hearing, the parties advised that they had reached an agreement wherein defendants admitted liability for claimant's back injuries occurring on April 17, 2018 and October 2, 2018, and will authorize J. Joe Hawk, M.D., at the Iowa Clinic in West Des Moines, Iowa, to evaluate and treat claimant's back condition related to his work injuries as pled in File Nos. 5067207 and 5067208.

IT IS SO ORDERED.

Signed and filed this 28th day of May, 2019.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Stephen D. Lombardi
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katrina.phillip8@gmail.com

D. Brian Scieszinski
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801 Grand Avenue Ste 3700
Des Moines IA 50309-2727
Scieszinski.brian@bradshawlaw.com

TJG/kjw

FILED
MAY 17 2019
WORKERS COMPENSATION

BEFORE THE IOWA WORKERS COMPENSATION COMMISSIONER

Jentry Saltzman, Claimant, v. Woodward-Granger CSD, Employer, and EMCASCO Insurance Company, Defendants	File No.: 5067206 DOI: 4/10/2017 (Right ankle) File No.: 5067207 DOI: 4/17/2018 (Back) File No.: 5067208 DOI: 10/2/2018 (Back) CLAIMANT'S MOTION FOR ORDER NUNC PRO TUNC OR FOR AN ADDITIONAL HEARING

COMES NOW the Claimant and files this Motion for an Order Nunc Pro Tunc or for an Additional Hearing with regard to the Consent Order issued by Deputy Commissioner Toby Gordon on May 16, 2019 pursuant to the Alternate Medical Hearing that took place on this same date. In support thereof, Claimant states the following:

1. The Consent Order did not include the fact that Defendants admitted liability during the hearing on Claimant's Petition for Alternate Medical Care.
2. Defendants did in fact admit liability during this hearing for the back injury with injury dates of 4/17/2018 and 10/2/2018 and the hearing officer indicated this admission would be in the Consent Order.
3. Claimant did not agree to the authorization of Dr. Hawk for treatment of the back without the admission of liability by Defendants.
4. Claimant will not consent to Defendants controlling medical care if they are not admitting liability.

WHEREFORE Claimant requests the Deputy Commissioner issue an Order Nunc Pro

Received Time May. 17. 2019 10:44AM No. 1609

Tunc with this clarification regarding Defendants' admission of liability for the back injuries, or alternatively to Order another hearing in which Defendants specify whether they admit liability for these back injuries on the record.

LOMBARDI LAW FIRM
By: _____
Stephen D. Lombardi, AT0004702
By: _____
Katrina M. Phillip, AT0011709
5000 Westown Pkwy., Suite 440
West Des Moines, IA 50266
515-222-1110/F:515-222-0718
sdlombardi@aol.com
katrina.phillip8@gmail.com
ATTORNEYS FOR THE CLAIMANT

Original filed with the Iowa Worker's Compensation Commission
Attn: Deputy Toby Gordon

Copy to:
D. Brian Scieszinski AT0007103
Bradshaw Law Firm
801 Grand Ave., Suite 3700
Des Moines, IA 50309-8004
515-246-5849/F: 515-246-5808
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 17 20 19
By: ☐ Overnight Courier ☑ FAX ☐ E mailed
☐ Hand Delivered ☐ U.S. Mail ☐ E filed
☐ Certified Mail ☐ Scanned ☐ Other
Signature _____

Received Time May. 17. 2019 10:44AM No. 1609

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENTRY SALTZMAN, Claimant, vs. WOODWARD-GRANGER COMMUNITY SCHOOL DISTRICT, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED MAY 16 2019 WORKERS COMPENSATION File Nos. 5067207, 5067208 ALTERNATE MEDICAL CARE CONSENT ORDER

On May 6, 2019, claimant filed two Petitions for Alternate Medical Care, one in each of the above files, which were combined for hearing on May 16, 2019.

At the time of the hearing, the parties advised that they had reached an agreement wherein defendants will authorize J. Joe Hawk, M.D., at the Iowa Clinic in West Des Moines, Iowa, to evaluate and treat claimant's back condition related to his work injuries as pled in File Nos. 5067201 and 5067208.

Claimant requested their agreement be formalized in a consent order and defendants agreed.

IT IS SO ORDERED.

Signed and filed this 16th day of May, 2019.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

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TJG/kjw

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

Claimant:	JENTRY SALTZMAN	File No. 5067207; 5067208
vs.		NOTICE OF
Employer:	WOODWARD GRANGER CSD	TELEPHONE HEARING
and		ALTERNATE MEDICAL CARE
Insurance Carrier:	EMC	(876 IAC 4.48)

You are notified that a telephone hearing on claimant's application for Alternate Medical Care under rule 876 IAC 4.48 is scheduled before a deputy workers' compensation commissioner as follows:

SCHEDULING INFORMATION

DATE: MAY 16, 2019

IOWA TIME: 10:30AM

You will be called for the hearing at the telephone number that you placed on your application or answer. If your application or answer indicates that you have an attorney, the call will be placed to the telephone number for your attorney. We will call one additional number for you when the hearing begins if you or your attorney request that we do so.

If you or your attorney need to be called at a number different from the number shown on the application or answer or if you need us to call more than one additional number, you must notify us no later than 4:30 p.m. on the last business day before the date of the hearing. You may notify us by telephone at (515) 725-4120, or by fax at (515) 281-6501, or you may deliver a written notice to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, IA 50319. WE WILL ONLY CALL THE NUMBER SHOWN ON YOUR APPLICATION OR ANSWER UNLESS YOU GIVE US A DIFFERENT OR ADDITIONAL NUMBER.

This hearing will be held under authority and jurisdiction of Iowa Code chapter 17A, section 85.27 and 876 IAC 4.48. The only issue to be considered is whether claimant is entitled to alternate medical care.

INSTRUCTIONS AND INFORMATION

You must be prepared to present your case at the time specified in this notice.

If you wish to participate in this telephone hearing you must have given the Division of Workers' Compensation (DWC) the number(s) to call by: (1) placing the number(s) on your application/answer; **OR** (2) by telephone (515) 725-4120; **OR** (3) by fax (515) 281-6501.

All written evidence to be used at the hearing must be: (1) limited to ten pages per party; (2) exchanged with all parties prior to hearing; (3) filed with DWC BEFORE the hearing. Clearly identify the evidence as "under rule 876 IAC 4.48."

All discovery must be completed prior to hearing. DWC will not rule on discovery disputes or motions.

All motions, except motions to change the type of hearing (telephone or in-person), will be considered at the hearing.

Hearing briefs, if any, must be filed with DWC before the date of hearing and are limited to three pages.

A party may be represented as provided in rule 876 IAC 4.48(13).

At hearing, the employer will be required to respond on the record to the allegations contained in claimant's petition if a written answer is not on file.

The provisions of rule 876 IAC 4.48 are properly invoked only where liability of the employer is not at issue. If employer places liability at issue, this case will be dismissed without prejudice. Disputed liability cases should be commenced under rule 876 IAC 4.1 (Contested Case Proceeding).

To Defendant(s): You have the right to request an in-person hearing in Des Moines. You may do so by filing an answer prior to hearing, on the same form containing claimant's original notice and petition.

DATE FILED: 5/6/2019

CC: STEPHEN D LOMBARDI
KATRINA M PHILLIP
D BRIAN SCIESZINSKI

14-0051 (9/06)

FILED
MAY 06 2019
WORKERS' COMPENSATION

(TYPE OR PRINT)

14-0011 (11/06)
FORM 100C

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

Claimant Jentry Saltzman

VS. Employer Woodward-Granger CSD
Street 1904 State St.
City Granger State IA Zip 50109
Insurance Carrier EMC
Street 717 Mulberry St.
City Des Moines State IA Zip 50309

File Number 5067207, 5067208,

ORIGINAL NOTICE, PETITION, AND ANSWER CONCERNING APPLICATION FOR ALTERNATE MEDICAL CARE (IOWA CODE SECTION 85.27) (Rule 876 IAC 4.48)

Injury Date 4-17-2018, 10-2-2018
Body Part(s) Injured Back, Back

ORIGINAL NOTICE

To the Above-Named Employer:

You are notified that an action has been commenced before the Iowa Workers' Compensation Commissioner seeking relief as set forth in the petition below. **DUE TO THE TIME CONSTRAINTS, IT IS NOT NECESSARY TO FILE AN ANSWER.** If no answer is filed, a response will be required at a hearing. If it is disputed that the employer is liable on this claim, this case will be dismissed without prejudice. **NOTE:** You should promptly advise your workers' compensation insurance carrier and attorney that you have received this notice.

PETITION (To Be Completed By Claimant)

In support of this claim for alternate medical care, claimant states:

1. Claimant sustained injury arising out of and in the course of employment with the employer on (Date) 4-17-2018, 10-2-2018
2. The injury occurred at (City) Granger, (County) Dallas, and (State) Iowa.
3. The injury has caused need for medical treatment.
4. The treatment offered by employer is not reasonably suited to treat the injury without undue inconvenience to claimant.
5. Claimant is dissatisfied with the care provided and has communicated that dissatisfaction to employer.
   Reason for dissatisfaction and relief sought: Treatment for extreme back pain has been requested to the Attorney for the Defendants three times, All three have been ignored. See Exhibits
6. **A hearing is requested**
   [✓] by telephone conference call; or.
   [ ] in person
   to be held in Des Moines, Iowa (If neither party requests an in-person hearing, a telephone hearing will be scheduled.)
7. Employer does not dispute liability on this claim.
8. The provisions of Rule 876 IAC 4.48 are invoked.

Attorney (If Represented by Attorney) Stephen D. Lombardi, Katrina M. Phillip
Street 5000 Westown Pkwy Ste 440
City W. Des Moines State IA Zip 50266
Stephen Lombardi / Katrina Phillip
Attorney Signature
Phone (Include Area Code) 515-222-1110

Jentry E. Saltzman
(Claimant's Signature)
Claimant's Phone No. (515) 333-1322
(Include area code)
Date signed: 5-2-2019
sdlombardi@ad.com, katrina.phillip8@gmail.com
Email Address of Attorney
Fax (Include Area Code 515-222-0718
Date Signed: 5-2-2019

THE INFORMATION PROVIDED WILL BE OPEN FOR PUBLIC INSPECTION UNDER IOWA CODE §22.11

Jentry Saltzman (Claimant) **vs.** Woodward-Granger CSD (Employer) **File No.** 5067207, 5067208

PROOF OF SERVICE

On the 2nd day of May, 2019, I mailed a copy of the foregoing original notice and petition by certified mail, return receipt requested, to the employer's last known address which is: 1904 State St. Granger, Iowa 50109

I CERTIFY under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date 5-2-2019 Signature Barbara A. Lombardi

ANSWER (Employer/Insurance Carrier must answer on this form)

1. Employer/Insurance Carrier admit all allegations of the petition except those contained in paragraphs (Enter numbers) _____ which are expressly denied.
2. Employer/Insurance Carrier consent to pay the reasonable expenses of the requested examination.
3. Evidentiary hearing under Iowa Code section 17A.12 is waived.

On behalf of the employer and insurance carrier and based upon my own knowledge of the circumstances, I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding answer is true and correct. Date: _____

Employer _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Insurer _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

_____
Signature of Person Answering

Name: _____

Title: _____

(If Represented by Attorney)

Attorney _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Fax Number (include Area Code) _____

Email Address: _____

ORDER (Completed by the deputy workers' compensation commissioner)

☐ Allegations 3 and 4 of the petition are found to be true.

☐ The application is granted. Employer/Insurance Carrier shall immediately reimburse claimant the reasonable expenses of the requested examination, including travel expenses.

☐ The application is denied. Reason: _____

☐ The application will be heard as an issue in an arbitration decision and should be identified as an issue in the hearing report.

Signed and filed this _____ day of _____, _____

Deputy Workers' Compensation Commissioner _____

Copies To: Attorney(s) at Law or Pro Se _____ Attorney(s) at Law or Pro Se _____

INSTRUCTIONS - BOTH PARTIES MUST USE THIS FORM

To Claimant:

1. You must attach to this form a copy of the physician's report which evaluates your permanent disability to support paragraph "3" of the petition. You must also attach the claimant's confidential information sheet.
2. Deliver a copy of this form with the front page completed and the physician's report to the employer by certified mail, return receipt requested or by personal services as in civil actions (rule 876 IAC 4.7) and mail a copy to the employer's attorney of record for this file if known (rule 876 IAC 4.13).
3. Complete the proof of service portion on the original of this form and deliver this entire form with the physician's report to the Division of Workers' Compensation at 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.
4. If you desire an evidentiary hearing, delete paragraph "6" of the petition and in its place enter "I request a hearing." Rule 876 IAC 4.4.

To Employer/Insurance Carrier:

BEFORE THE IOWA WORKERS COMPENSATION COMMISSIONER

Jentry Saltzman, Claimant, v. Woodward-Granger CSD, Employer, and EMCASCO Insurance Company, Defendants	File No.: 5067206 DOI: 4/10/2017 (Right ankle) File No.: 5067207 DOI: 4/17/2018 (Back) File No.: 5067208 DOI: 10/2/2018 (Back) CLAIMANT'S AFFIDAVIT IN SUPPORT OF PETITION FOR ALTERNATE MEDICAL CARE

STATE OF IOWA)
)
COUNTY OF POLK)

I, Jentry Saltzman, hereby swear and affirm that the following statements are true and correct as I verily believe:

1. My name is Jentry Saltzman and I sustained injuries to my back in the course of my employment with the Defendant, Woodward-Granger CSD.
2. I have requested treatment for my back as I am in severe pain and have received no authorization from the worker's compensation carrier to be treated for my back.
3. My attorneys sent 3 letters to the Defendants' attorney requesting treatment and all requests have been ignored. Letters attached as Exhibits.
4. I called Pain Specialists of Iowa on 4/25/2019 to schedule an appointment but they refused to see me because of an open Worker's Compensation claim.
5. I asked the Pain Specialists to use my health insurance for this appointment but they said they were unable to do that since there was an open Worker's Compensation claim.
6. I went to the Iowa Clinic Urgent Care in Ankeny on 4/29/2019 and after I was in the exam room and told them the reason I was there was related to a work injury, they initially refused an examination, made me call my lawyer, then continued to refuse to do any tests, then at my mother's insistence gave me a Toradol injection for the pain, but

nothing else.

7. I called Pain Specialists of Iowa again on 5/1/2019 to try to schedule an appointment and was told to produce a letter of denial of the claim.
8. My lawyers are unable to get the employer, the insurance company or their lawyers to cooperate or to even provide denials of the claim.
9. I am 24 years old and in extreme back pain due to injuries sustained while working at Woodward Granger Community School District, and all I am asking for is authorization for treatment.
10. I want to control my own medical treatment and an Order from the Industrial Commission will allow me to obtain care of this disputed claim.

Further affiant sayeth not.

Jentry Saltzman 5-2-19

Jentry Saltzman Date

Subscribed and sworn to before me by the said Jentry Saltzman on this 2nd day of May, 2019.

Barbara A. Lombardi

Notary Public in and For the State of Iowa

NOTARIAL SEAL IOWA
BARBARA A. LOMBARDI
Commission Number 740733
My Commission Expires
5-16-2021

LOMBARDI LAW FIRM

STEPHEN D. LOMBARDI
ALSO LICENSED IN FLORIDA

KATRINA M. PHILLIP
ALSO LICENSED IN GEORGIA

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WEST DES MOINES, IOWA 50266

(515) 222-1110
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sdlombardi@aol.com
katrina.phillip8@gmail.com

April 4, 2019

D. Brian Scieszinski
Bradshaw Law Firm
801 Grand Ave., Suite 3700
Des Moines, IA 50309-8004

FAX: 515-246-5808

Re: Jentry Saltzman
DOI: 4/17/2018 and 10/2/2018

Dear Brian:

This is a request for authorization for treatment for the back injuries sustained on 4/17/2018 and 10/2/2018. Claimant, Jentry Saltzman is experiencing back pain and requires authorization for treatment.

Please advise.

Very truly yours,

Stephen D. Lombardi
Attorney at Law

Katrina M. Phillip
Attorney at Law

SDL/KMP/btl

EXHIBIT
1

LOMBARDI LAW FIRM

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katrina.phillip8@gmail.com

April 19, 2019

2nd REQUEST

D. Brian Scieszinski
Bradshaw Law Firm
801 Grand Ave., Suite 3700
Des Moines, IA 50309-8004

FAX: 515-246-5808

Re: Jentry Saltzman
DOI: 4/17/2018 and 10/2/2018

Dear Brian:

This is a request for authorization for treatment for the back injuries sustained on 4/17/2018 and 10/2/2018. Claimant, Jentry Saltzman is experiencing back pain and requires authorization for treatment.

Please advise.

Very truly yours,

Stephen D. Lombardi
Attorney at Law

Katrina M. Phillip
Attorney at Law

SDL/KMP/btl

EXHIBIT
2

LOMBARDI LAW FIRM

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April 24, 2019

D. Brian Scieszinski
Bradshaw Law Firm
801 Grand Ave., Suite 3700
Des Moines, IA 50309-8004

*****3rd REQUEST*****

FAX: 515-246-5808

Re: Jentry Saltzman
DOI: 4/17/2018 and 10/2/2018

Dear Brian:

This is the **3rd request** for authorization for treatment for the back injuries sustained on 4/17/2018 and 10/2/2018. Claimant, Jentry Saltzman is experiencing terrible back pain and requires authorization for treatment.

Previously, requests were sent to you on 4/4/2019 and 4/19/2019. Treatment for back pain should not have to wait 20+ days for treatment. Please respond by 9:00 a.m. tomorrow, April 25, 2019 or Ms. Saltzman will choose her own treating physician.

Please advise.

Very truly yours,

Stephen D. Lombardi
Attorney at Law

Katrina

Katrina M. Phillip
Attorney at Law

SDL/KMP/btl

EXHIBIT
3

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IN THE MATTER OF DELEGATION OF AUTHORITY	ORDER	FILED FEB 16 2015 WORKERS' COMPENSATION

The legislative intent of Iowa Code section 85.27 is that applications for alternate care be decided by the agency in a timely manner. Delegating authority to the presiding deputy workers' compensation commissioner to act as the workers' compensation commissioner in presiding at the contested case hearing and issuing final agency action is consistent with the legislative intent.

The deputy workers' compensation commissioner presiding at the contested case in an application for alternate medical care, pursuant to rule 876 IAC 4.48, is hereby delegated the authority to issue the final agency decision on the application, Iowa Code section 86.3. There is no right of intra-agency appeal on this decision. Continental Telephone Co. v. Colton, 348 N.W.2d 623 (Iowa 1984) and LeaseAmerica Corp. v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983).

The presiding deputy workers' compensation commissioner's decision in an application for alternate care is the final agency decision. Iowa Code section 17A.15(1).

This authority shall continue until further ordered.

Signed and filed this 16th day of February, 2015.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER