

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN E. MEIER,

Claimant,

vs.

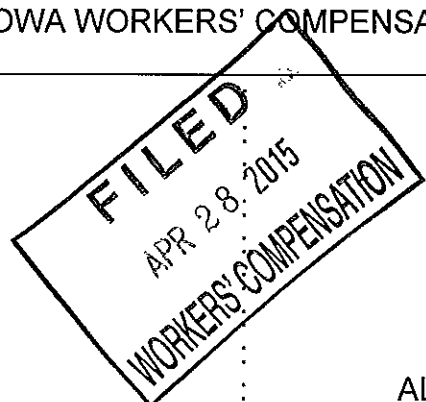
ALCOA, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.



File No. 5052471

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Steven Meier.

This alternate medical care claim came on for hearing on April 28, 2015. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's exhibit 1, defendants' exhibits A through D, and the testimony of claimant and Ken Jubell. Claimant's exhibit was numbered by the undersigned for clarity of the record. Claimant represented himself pro se at the hearing.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of surgery to both upper extremities performed by a physician other than Tyson Cobb, M.D.

FINDINGS OF FACTS

Defendants accept liability for an injury to claimant occurring on November 6, 2014.

On October 13, 2014 claimant was evaluated by Brian Anseeuw, M.D. for pain in his lower extremities. Claimant was assessed as having neuropathy in his upper extremities. (Exhibit 1, pages 2, 5-6) An EMG performed on October 31, 2014 showed neuropathy in both median nerves at the wrist and in both ulnar nerves at the elbows. (Ex. 1, p. 3)

On December 19, 2014, claimant was evaluated by Dr. Cobb for bilateral upper extremity complaints. Claimant was assessed as having bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and bilateral golfer's elbow, left worse than right. Claimant was given splints to use on his arms at night and given exercise for the golfer's elbow. Claimant was also given a cortisone injection in the left carpal tunnel. (Ex. A)

On January 17, 2015 claimant returned to Dr. Cobb with continuing pain in both upper extremities. Claimant wanted to proceed with surgery. (Ex. B)

Claimant underwent a carpal tunnel and cubital tunnel release on the left and a Tenex procedure on the left medial epicondyle on January 26, 2015. (Ex. C)

Claimant returned to Dr. Cobb on February 17, 2015. Records indicate claimant's carpal tunnel was resolving and his ulnar nerve symptoms had completely resolved. Claimant was returned to work with a five-pound lifting restriction on the left. (Ex. C)

Claimant testified his arm hurt twice as bad after surgery as it did before surgery.

On March 12, 2015 claimant returned in follow-up with Dr. Cobb with complaints of increased pain on the left. Claimant was told that, in some cases, longer periods are required for pain relief. The potential for a cervical problem was also discussed. Claimant was discontinued from physical therapy due to concerns of aggravating his pain. (Ex. D)

Claimant testified he met with Vicki Doner with Alcoa after his surgery with Dr. Cobb. He said Ms. Doner told him Alcoa was trying to refer him to a Dr. Kane (no first name given) in Iowa City, Iowa for further treatment. Claimant testified he was unaware he had a follow-up appointment with Dr. Cobb, as he believed defendants were trying to get him an appointment with a Dr. Kane in Iowa City.

Ken Jubell testified he is a committee member of United Steelworkers Local 105. He said he was with claimant when Ms. Doner indicated she was trying to get claimant an appointment with a Dr. Kane in Iowa City.

Claimant testified he is unhappy with the care provided by Dr. Cobb. Claimant testified several times he does not want Dr. Cobb to perform further surgery on him. He said he has an appointment scheduled with a Quad City orthopedic surgeon, Thomas VonGillern, M.D. to discuss further treatment. He testified he knows workers' compensation will not pay for care provided by Dr. VonGillern. Claimant testified he believes he is entitled to see a doctor to discuss his health.

In a professional statement, defendants' counsel indicated defendants have attempted to locate other physicians to care for claimant. Defendants' counsel indicates this has been difficult, as other doctors do not want to treat claimant when he is still undergoing treatment with Dr. Cobb. Defendants' counsel indicated defendants are attempting to have claimant treated at the Steindler Clinic in Iowa City. Defendants have requested claimant continue to be evaluated by Dr. Cobb until another physician can be located to continue his care.

Claimant indicated he does not want Dr. Cobb to perform surgery on him. He said he would be willing to see Dr. Cobb in follow-up until another provider can be located to provide care.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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)

Alternate care included alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

Defendants indicate they are in the process of trying to find another physician to treat claimant. They request claimant see Dr. Cobb in follow-up care for the left arm while they are trying to locate another provider. Claimant indicated he would see Dr. Cobb in follow-up, but does not want Dr. Cobb to perform further surgery.


Because defendants are trying to locate another provider for claimant, and because claimant has expressed a willingness to see Dr. Cobb in follow-up care for his left arm until another provider is located, claimant's petition for alternate medical care is denied.

ORDER

THEREFORE, it is ordered:

That claimant's petition for alternate medical care is denied. This denial is based on the understanding that defendants are in the process of locating another physician to treat claimant, and will authorize treatment with a new provider once one is located.

Signed and filed this 28th day of April, 2015.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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