

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THOMAS SMOLEK,

Claimant,

vs.

SPEEDCONNECT, LLC,

Employer,

and

LIBERTY MUTUAL INSURANCE,

Insurance Carrier,
Defendants.



File No. 5063707

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Thomas Smolek. Claimant filed a petition on June 28, 2017. He alleged at paragraph 5 of his petition:

Reason for dissatisfaction and relief sought: Refusal to approve and authorize any care/abandonment of care[.]

Claimant submitted proof of service of the petition upon defendant-employer on June 30, 2017. This Agency mailed notice of hearing to the parties, including defendant-employer and defendant-insurance carrier, on June 30, 2017. Despite these actions, defendants did not file an answer or appearance. Accordingly, the matter proceeded to hearing without the participation of defendants.

The alternative medical care claim came on for hearing on July 11, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The evidentiary record consists of claimant's exhibit 1.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of designation of Peter Rink, D.O., as an authorized treating physician.

FINDINGS OF FACT

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

Claimant sustained a work-related injury to his right ankle on May 8, 2017.

Claimant was seen at ORA Orthopedics on May 9, 2017 by Peter Rink, D.O. Dr. Rink initiated a course of conservative care and imposed work restrictions limiting claimant to light duty clerical work. (Ex. 1, p. 4) Claimant continued to follow up with Dr. Rink, who on June 6, 2017, diagnosed a partial tear of the right Achilles tendon. Dr. Rink referred claimant for physical therapy and continued claimant's light duty work restrictions. (Ex. 1, pp. 5-6)

On June 20, 2017, claimant's attorney authored correspondence to Aimee Blount of defendant-insurance carrier. Counsel described claimant's work injury and course of care. (Ex. 1, pp. 1-2) He also requested defendants "assume responsibility and authorization for [claimant's] care." In the event defendants failed to respond, claimant's counsel represented an intent to file an alternate care petition. (Ex. 1, p. 2)

On June 27, 2017, claimant returned to Dr. Rink, who recommended continued physical therapy and left claimant's work restrictions intact. (Ex. 1, pp. 7-8)

Claimant filed the instant alternate care proceeding on June 28, 2017. At the time of hearing, claimant's counsel represented claimant requested designation of Dr. Rink as an authorized treating physician with respect to claimant's right ankle injury.

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 1975).

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).

“Determining what care is reasonable under the statute is a question of fact.”
Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (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.”

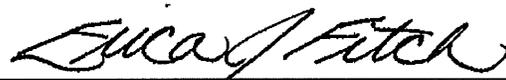
I find Dr. Rink’s recommended care is reasonable and necessary in treatment of claimant’s right ankle injury. Defendants have not authorized any medical care or evaluation of claimant’s right ankle injury. Accordingly, defendants have failed to promptly offer claimant medical care reasonably suited to treat his injury. Having so found, claimant is entitled to an award of alternate medical care.

ORDER

THEREFORE, IT IS ORDERED:

Claimant’s petition for alternate medical care is granted. Dr. Rink is hereby designated as an authorized treating physician for claimant’s right ankle injury. Defendants are responsible for claimant’s care with Dr. Rink and shall abide by Dr. Rink’s treatment recommendations.

Signed and filed this 11th day of July, 2017.



ERICA J. FITCH
DEPUTY WORKERS’
COMPENSATION COMMISSIONER

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