

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT E. NEFF,

Claimant,

vs.

ARCONIC,

Employer,

and

INDEMNITY INSURANCE CO.,

Insurance Carrier,  
Defendants.

**FILED**

MAY 23 2019

WORKERS COMPENSATION

File No. 5068389

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, Robert E. Neff. Claimant appeared telephonically and chose to proceed unrepresented by counsel. Defendants appeared through their attorney, Jane Lorentzen.

The alternate medical care claim came on for hearing on May 22, 2019. 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 exhibit pages 1 through 5 and defendants' exhibits A through C. Claimant provided testimony, as did Lisa Travis-Hilbert, RN, defendant-employer's medical department supervisor. Both Mr. Neff and Ms. Lorentzen offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an unidentified specialist of his choosing.

## FINDINGS OF FACT

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

Claimant sustained a left shoulder injury on December 8, 2018. Defendants admitted liability for this injury and the current left shoulder condition for which claimant seeks alternate medical care.

On January 9, 2019, roughly a month after his injury, claimant underwent an MRI that revealed anterior and inferior labral tears of the left shoulder. (Claimant Exhibit page 4) Claimant testified his MRI was sent to ORA Orthopedics on February 15, 2019 to determine whether Suleman Hussain, M.D., would perform an independent medical examination (IME) to address causation. (Cl. Testimony) It was not until March 21, 2019, roughly five weeks after the MRI was sent to ORA, that Dr. Hussain agreed to perform the IME. (Cl. Testimony) The IME was initially scheduled for May 10, 2019. (Cl. Testimony)

By this time, claimant was frustrated by the delay in obtaining the IME with Dr. Hussain, so he filed a grievance through the union in an attempt to expedite his appointment. (Cl. Testimony) Through the grievance process, claimant was able to get his IME moved from May 10, 2019 to April 12, 2019. (Cl. Testimony)

Despite several phone calls from Ms. Travis-Hilbert to Dr. Hussain's office after the April 12, 2019 IME, defendants did not obtain Dr. Hussain's IME report until May 22, 2019, just hours before the hearing in this matter. (Travis-Hilbert Testimony) Based on the causation opinion in Dr. Hussain's report, defendants agreed to authorize the care recommended by Dr. Hussain. In fact, per Ms. Lorentzen, defendants have an appointment scheduled for claimant with Dr. Hussain on May 24, 2019.

Claimant does not have an issue with Dr. Hussain's treatment recommendations, nor does he have a problem with Dr. Hussain being his treating physician. (Cl. Testimony) Instead, claimant's dissatisfaction stems solely from the length of time it took to obtain treatment.

While I understand and appreciate claimant's frustration, claimant now has a pending appointment with Dr. Hussain later this week. In light of this pending appointment with a provider with whom claimant has no objection, I find the care now being offered by defendants is reasonable.

## REASONING AND CONCLUSIONS OF LAW

Iowa Code section 85.27 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.

Iowa Code § 85.27(4).

Defendants' "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, 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. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

In this case, the claimant has not proven that the care now offered by defendants is unreasonable. Defendants have an appointment scheduled with Dr. Hussain later this week, and claimant has no objection to Dr. Hussain or his recommended treatment. As discussed above, I found this care to be reasonable.

That being said, it has been roughly five months since claimant's MRI revealed labral tears, and claimant is just now being offered treatment. Claimant acknowledged defendants were persistent in contacting Dr. Hussain's office for his IME report, but that does not alleviate the significant delay in providing claimant treatment. Defendants are cautioned against similar delays going forward, as such delays could be deemed a failure to offer prompt care, which would result in defendants' loss of control of claimant's medical care.


For the reasons discussed, claimant has failed to satisfy his burden to prove he is entitled to alternate medical care at this time.

**ORDER**

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is denied.

Signed and filed this 23<sup>rd</sup> day of May, 2019.

  
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STEPHANIE J. COPLEY  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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