

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JARED KAIN,

Claimant,

vs.

JEO CONSULTING GROUP, INC.,

Employer,

and

TRAVELERS,

Insurance Carrier,  
Defendants.

File No. 21006052.02

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, Jared Kain. Claimant appeared telephonically and through his attorney, Joseph Powell. Defendant appeared through attorney Julie Burger.

Claimant's application for alternate medical care was filed on October 25, 2022. Claimant alleges bilateral arm injuries occurring on August 5, 2020. He seeks authorization to continue to treat with Patricia Kallemeier, M.D., including receiving the treatment she recently recommended consisting of physical therapy and a follow up appointment. Defendant filed an answer on October 27, 2022, and admitted liability for the injury alleged, but argues no additional treatment is recommended.

The claim came on for hearing on November 7, 2022. 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 through 3, consisting of 10 pages; defendant's exhibits A through C, consisting of 9 pages, and claimant's sworn testimony. Both attorneys also presented arguments regarding their clients' positions.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of authorization for claimant to continue treatment with Patricia Kallemeier, M.D., including resuming the physical therapy she previously recommended and a follow-up visit.

## FINDINGS OF FACT

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

Claimant sustained bilateral upper extremity injuries while working for defendant employer on August 5, 2020. Shortly after the injury, claimant began authorized treatment with Dr. Kallemeier at Des Moines Orthopedic Surgeons (DMOS). (Claimant's Testimony) Claimant's treatment has included surgery, and platelet rich plasma (PRP) injections with Dr. Mark Fox, also at DMOS. (Testimony; Defendants' Exhibit A, p. 4)

On August 23, 2022, defendants wrote to Dr. Kallemeier to ask whether claimant's recent non-work related activities, including helping a friend build a pole barn, using 20-pound kettlebells, and trapping and skinning animals, were the primary cause of his complaints. (Def. Ex. C, pp. 1-2) Dr. Kallemeier marked the box indicating, "Yes, I can say within a reasonable degree of medical certainty, that Mr. Kain's work activities, not his non-work activities, are the primary cause for his complaints." (Def. Ex. C, p. 1) However, she also provided a hand-written note that states, "The recent activities have temporarily aggravated his symptoms." (Def. Ex. C, p. 2)

On September 12, 2022, claimant attended an independent medical evaluation (IME) with Benjamin Paulson, M.D. (Def. Ex. A) Dr. Paulson's report is dated September 23, 2022. Dr. Paulson recommended that claimant have no further surgery and stated he did not see "any treatment of any kind" that would be beneficial to claimant. (Def. Ex. A, p. 4) He also noted that in April, 2022, Dr. Fox indicated that he had "simply exhausted all treatment options that I am able to perform."

On October 4, 2022, defendants wrote to Dr. Kallemeier and asked her to review Dr. Paulson's IME report, and respond to three questions. (Def. Ex. B) Dr. Kallemeier did not respond until October 25, 2022. (Def. Ex. B, p. 2) In the meantime, she saw claimant on October 10, 2022. (Claimant's Exhibit 2) At that time, claimant had continued pain in the bilateral elbows, and ongoing numbness and tingling in his bilateral ring and small fingers. (Cl. Ex. 2, p. 1) Dr. Kallemeier noted Dr. Paulson's recent IME and his opinion that claimant should not have additional surgery. She discussed the possibility of surgery with claimant, and noted that she agreed with Dr. Paulson that tennis elbow is typically a "self-limiting process," however in some cases she will perform surgery, especially with symptoms persisting for over one year. (Cl. Ex. 2, p. 2) Ultimately, at that visit, Dr. Kallemeier recommended continued therapy for claimant's bilateral upper extremities, noting she would see him back in six weeks.

Dr. Kallemeier then responded to defendants' questions on October 25, 2022. (Def. Ex. B, pp. 1-2) The first question was whether she agreed with Dr. Paulson's opinion that no additional treatment was warranted for claimant. (Def. Ex. B, p. 1) She marked yes, indicating her agreement. She also opined that claimant had not reached maximum medical improvement (MMI).

Following Dr. Kallemeier's response, defendants declined to authorize any additional treatment with Dr. Kallemeier. Claimant testified that he had only one physical therapy appointment following the October 10 visit with Dr. Kallemeier, after which he was advised that further therapy had been denied. On October 27, 2022, claimant's attorney wrote to Dr. Kallemeier seeking clarification regarding her agreement with Dr. Paulson that no additional treatment was warranted. (Cl. Ex. 3, pp. 1-2) Dr. Kallemeier replied the same day. (Cl. Ex. 3, p. 3) She explained that on October 10, she recommended that claimant continue with bilateral upper extremity therapy, as she was not recommending surgery at that time. When she answered "yes" to defendants' question regarding Dr. Paulson's report, she was referring to surgical treatment for claimant's tennis elbow at that time.

I find that Dr. Kallemeier is the authorized treating physician. She has recommended additional bilateral upper extremity therapy and a follow up appointment with her once it is completed. Any confusion regarding her recommendation was resolved by her October 27, 2022 letter, indicating that she only agreed with Dr. Paulson insofar as he was not recommending surgery at that time. Therefore, claimant is entitled to alternate medical care.

#### REASONING AND CONCLUSIONS OF LAW

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.

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 she 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.

An employer’s right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 18, 1988). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

The right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. The employer must provide the treatment, testing, imaging or other treatment modalities recommended by its own authorized treating physician, even if another consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002) [MRI and x-rays]; Cahill v. S & H Fabricating & Engineering, (Alt Care, File No. 1138063, May 30, 1997) (work hardening program); Hawxby v. Hallett Materials, File No. 1112821, (Alt Care, February 20, 1996); Leitzen v. Collis, Inc. File No. 1084677, (Alt Care, September 9, 1996). The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v Cargill, Inc. File No. 1050396, (Alt Care, January 31, 1994).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, defendants have denied further authorization for care with Dr. Kallemeyer, despite her recommendation for additional physical therapy and follow up. While her initial statement indicating agreement with Dr. Paulson was confusing, she has since clarified that she only agreed that no surgery is recommended at this time. Defendants have accepted liability for the injury. They selected and authorized Dr. Kallemeyer. Therefore, they are required to follow her recommendations for care.

## **ORDER**

THEREFORE IT IS ORDERED:

Claimant’s petition for alternate medical care is granted.

Defendants will immediately authorize claimant to attend physical therapy as recommended by Dr. Kallemeier, and authorize a follow-up appointment with her upon completion of the therapy.

Signed and filed this 7th day of November, 2022.

A handwritten signature in dark ink, appearing to read 'Jessica L. Cleereman', written over a horizontal line.

JESSICA L. CLEEREMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Powell (via WCES)

Julie Burger (via WCES)