BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD CAMDEN,

Claimant,

vs.

ROSENBOOM MACHINE & TOOL,

Employer,

and

FEDERAL INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5061775

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 procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Ronald Camden.

This alternate medical care claim came on for hearing on April 3, 2018. 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 Exhibits 1, 3 and 4; Defendants' Exhibits A through H, and the testimony of claimant and Bernice Santiago.

Prior to hearing defendants moved to dismiss the petition, as the case was allegedly premature due to insufficient discovery, citing to Rule 876 IAC 4.48(9). That motion was denied.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of left shoulder hemiarthroplasty.

FINDINGS OF FACT

Defendants accept liability for an injury occurring on December 12, 2013. Claimant testified in hearing that although the petition alleges a date of injury of December 19, 2013, the actual date of injury is December 12, 2013.

Claimant was a welder with the employer Rosenboom Machine & Tool (Rosenboom).

On March 18, 2014 claimant underwent an arthroscopic labral debridement with subpectoralis biceps tenodesis with Timothy Walker, M.D. (Exhibit A) Claimant was returned to work on June 5, 2016 without restrictions. (Ex. B) Dr. Walker found claimant at maximum medical improvement (MMI) on February 12, 2015 and found claimant had a four percent permanent impairment to the left upper extremity. (Ex. C) Claimant testified he returned to work with Rosenboom until he resigned on October 20, 2016.

Claimant testified he moved to Alabama in October of 2016. He said he began employment as a welder with Polaris in Alabama in approximately January of 2017. Claimant testified his job as a welder with Polaris is physically lighter work than was welding with Rosenboom.

Claimant testified that in June of 2017 he tripped at home during a power outage and hurt his back. Claimant testified he did not injure his shoulder in this fall. On June 28, 2017 claimant was seen by Dr. Ghavam for low back and left leg pain from falling. (Ex. D)

Claimant testified he began having left shoulder problems again before he moved to Alabama. Claimant said that beginning in March of 2017 he began contacting defendant insurer regarding further care. He said eventually in May of 2017 he spoke with his claims adjuster, Bernice Santiago, regarding more treatment for the left shoulder.

Ms. Santiago testified at hearing she is the claims adjuster for the insurer regarding claimant's shoulder injury. Ms. Santiago testified she has been involved with claimant's claim since December of 2013. Both claimant and Ms. Santiago testified defendant insurer authorized claimant to have further treatment for his left shoulder with David Stanton, M.D.

On July 19, 2017 claimant was evaluated by Dr. Stanton for left shoulder pain related to the December 2013 injury. Dr. Stanton indicated claimant's left shoulder pain was directly related to his work injury of December of 2013. (Ex. 3) Claimant testified Dr. Stanton gave him an injection and recommended physical therapy. He said a representative from the insurer was at his first exam with Dr. Stanton. Claimant said the representative gave Dr. Stanton, what claimant believed to be, his medical records.

On August 31, 2017, claimant returned in follow-up with Dr. Stanton. An MRI revealed degenerative labral tears throughout the left shoulder. Claimant was assessed as having left shoulder posttraumatic arthritis. A left shoulder hemiarthroplasty was recommended. Records indicate claimant understood the risks involved with surgery and desired to proceed with surgery. (Ex. 3)

Ms. Santiago testified claimant was contacted regarding the recommended surgery. Ms. Santiago testified claimant told her he wanted to build up seniority with Polaris before he took time off for surgery. She testified claimant indicated he wanted to put off having surgery until early 2018.

Ms. Santiago testified defendant insurer initially indicated it would agree to whatever course of treatment was recommended by Dr. Stanton. She said the insurer revaluated this position and eventually arranged for claimant to have an Iowa Code section 85.39 exam with a doctor in Iowa in January of 2018.

In a March 9, 2018 letter, claimant's counsel indicated claimant wanted the treatment recommended by Dr. Stanton. (Ex. G)

In a March 14, 2018 letter, defendants' counsel requested claimant make himself available for an Iowa Code section 85.39 exam with Kary Schulte, M.D. (Ex. H)

Both Ms. Santiago and claimant testified claimant would be attending the exam with Dr. Schulte.

Claimant testified he continues to have left shoulder pain. He testified he wants to have the surgery recommended by Dr. Stanton.

Ms. Santiago testified defendants want to bring claimant back to Iowa for an Iowa Code section 85.39 exam because defendants have questions regarding causation of the need for shoulder surgery. Ms. Santiago said defendant insurer wants the issue of causation addressed before the insurer will agree to provide the surgery recommend by Dr. Stanton.

CONCLUSIONS 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.

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

Defendants contend they can neither accept nor deny liability in this matter, until further investigation of the claim is completed. It is clear from the record in this matter that defendants have questions whether the recommended surgery is causally connected to the December of 2013 work injury. This is due, in part, because claimant was released to full duty with no restrictions in June of 2014, and because claimant has moved out of state.

Claimant contends that because defendants authorized Dr. Stanton for claimant's care, defendants are bound by Dr. Stanton's recommendations for treatment.

It is clear defendants have questions and concerns regarding the causal connection between claimant's December of 2013 injury and his need for surgery in 2018. Before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication. The summary provisions of Iowa Code section 85.27, as more particularly described in rule 876 IAC 4.48, are not designed to adjudicate disputed compensability of claims. Therefore, this action must be dismissed.

As a result of their denial of liability, at this time, for the condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this condition, but at claimant's expense, and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Ft. Des Moines Hotel, I Iowa Industrial Comm'r 3, 611 (March 27, 1985).

It is therefore ordered that this matter is dismissed without prejudice.

Signed and filed this 4th day of April, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
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