

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMIE D. WINTERS,

Claimant,

vs.

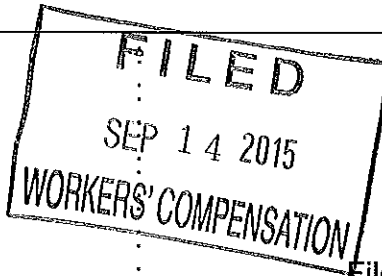
KIMCO FACILITIES SERVICES
CORPORATION d/b/a EUREST
SERVICES,

Employer,

and

AIG INSURANCE d/b/a CHARTIS INC.,
d/b/a NEW HAMPSHIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5043255

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, Jamie Winters. Claimant appeared personally and through his attorney, Kim Snitker. Defendants appeared through their attorney, Nathan McConkey.

The alternate medical care claim came on for hearing on September 14, 2015. 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 1, which is three pages. The record also contains defendants' exhibits, consisting of five pages. All exhibits were received into the evidentiary record without objection. No witnesses were called to testify, but counsel both offered helpful legal arguments and answered the undersigned's inquiries.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for a return evaluation to be performed by the authorized physician, Richard E. Rattay, M.D., for purposes of rendering a permanent impairment rating.

SUMMARY OF PROCEEDINGS AND AGREEMENT OF PARTIES

Counsel presented argument and discussed the pending difficulties in this case with the undersigned at hearing. Claimant seeks an order compelling defendants to obtain an impairment rating from Dr. Rattay. Claimant desires to return to see Dr. Rattay to encourage the physician to render an impairment rating.

Defendants argue that the pending request is not procedurally appropriate. Defendants contend that an evaluation for purposes of rendering an impairment rating is not medical care pursuant to Iowa Code section 85.27. Defendants further contend that they do not control Dr. Rattay or how timely he provides an impairment rating. Defense counsel has requested a permanent impairment rating from Dr. Rattay and defendants have contacted his office in an effort to secure the requested impairment rating.

After discussion with counsel, the parties are in agreement that an order can be entered by the undersigned in which the defendants are ordered to attempt to get an impairment rating from Dr. Rattay within the next 30 days. If they are not successful in obtaining that impairment rating from Dr. Rattay within the next 30 days, defendants shall be obligated to schedule an evaluation with another physician for purposes of obtaining a permanent impairment rating. The parties also concur that the impairment rating with Dr. Rattay or another physician of defendants' choosing should not be considered claimant's independent medical evaluation pursuant to Iowa Code section 85.39. In other words, claimant will retain any statutory rights he may otherwise have to an evaluation at defendants' expense pursuant to Iowa Code section 85.39.

Given that the parties were able to reach an agreement with the assistance of the undersigned at hearing, I find that the claimant's petition for alternate medical care does not state sufficient grounds at this time for the relief requested to be granted. However, I conclude that the parties' agreement is reasonable and appropriate. I conclude that it is appropriate to enter a consent order with the terms as agreed upon by the parties at the telephonic alternate medical care hearing.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall attempt to secure a permanent impairment rating from Richard E. Rattay, M.D. within 30 days of the entry of this order.

If defendants are not successful in obtaining a permanent impairment rating from Dr. Rattay within the above time frame, within 30 days thereafter, defendants shall schedule claimant to be evaluated by another physician for purposes of obtaining a permanent impairment rating.

Any permanent impairment rating obtained by defendants from either Dr. Rattay or from another physician of their choosing shall not be considered claimant's exercise of his statutory rights pursuant to Iowa Code section 85:39.

Claimant shall retain any statutory rights he may otherwise have to seek an evaluation with a physician of his choosing at defendants' expense pursuant to Iowa Code section 85.39 after defendants secure an impairment rating from Dr. Rattay or another physician.

Signed and filed this 14th day of September, 2015.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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