

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM KEMP,

Claimant,

vs.

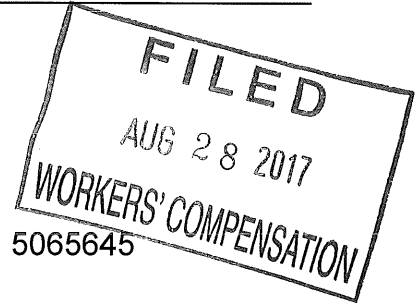
BUSINESS INSURERS OF GEORGIA,
INC., d/b/a PEOPLE 360 LLC,

Employer,

and

BENCHMARK INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5065645

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, William Kemp. Claimant appeared personally and through attorney, Eric Loney. Defendants appeared through their attorney, Caitlin Kilburg. Both parties were well-represented.

The alternate medical care claim came on for hearing on August 28, 2017. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 2, and defendant's exhibit A, which were all received without objection. The claimant provided sworn testimony. The defendants do not dispute liability for claimant's July 26, 2016, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to a return visit with the University of Iowa Burn Center.

FINDINGS OF FACT

The claimant sustained a serious frostbite injury to his bilateral hands on or about July 26, 2016. He was authorized to visit the University of Iowa Burn Unit where treatment was provided. This fact is stipulated. The defendants have provided a case manager to help coordinate claimant's treatment, Michael Sharp, RN.

Eventually, claimant was referred by the University of Iowa Burn Unit to Joseph Chen, M.D., for impairment rating. Dr. Chen evaluated Mr. Kemp on July 28, 2017. (Claimant's Exhibit 2) He placed him at maximum medical improvement and provided impairment ratings for both upper extremities. (Cl. Ex. 2, pp. 1-2) He did not mention further treatment at all. Claimant testified that Dr. Chen told him that if he needed any further care to follow up with the Burn Unit. This is not mentioned in the report.

Claimant testified that a return appointment was set up for August 10, 2017. It is unclear from this record when or why this appointment was originally arranged. The appointment was cancelled. Mr. Sharp provided a written statement by email to defense counsel where he stated the following.

In actuality, Mr. Kemp and Dr. Chen reported that follow up with the Burn Unit would be as needed, as Dr. Chen issued a fully duty RTW and MMI at this appointment. Dr. Chen did not recommend any additional treatments. . . . I spoke with Mr. Kemp following the appointment and he reported that he did not understand why he needed to follow up with the Burn Unit on 8/10/17. Mr. Kemp and I discussed, and was in agreeance with cancelling the 8/10/17 follow up appointment with the Burn Unit after we visited Dr. Chen.

(Def. Ex. A)

Mr. Kemp disputed Mr. Sharp's account in sworn testimony and claimed his wife would also dispute it. He testified that he has always wanted to return to the Burn Unit to have his hands checked out. He testified that he feels he still needs to have treatment for his hands and would like to have them evaluated for treatment options again.

REASONING AND 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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See

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. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

It is the position of the defendants that Dr. Chen is the authorized physician and that he has not recommended any specific additional treatment. Dr. Chen was not retained as an IME physician. He was referred for evaluation including treatment. The position of the defendants is that Dr. Chen did not recommend any further treatment. Consequently, the defendants have taken the position that they have provided reasonable treatment by complying with all of Dr. Chen's recommendations.

Ordinarily, I would agree with this analysis. There is no specific treatment recommendation by any physician in this record for ongoing treatment. It usually difficult to make a finding that the treatment offered by defendants is unreasonable without some type of written recommendation for treatment.


In this case, however, the case manager conceded that Dr. Chen recommended claimant should follow up with the Burn Unit "as needed." (Def. Ex. A) Mr. Kemp testified that he subjectively feels like he needs to be seen for his condition in his bilateral hands for ongoing maintenance treatment. While there is a dispute as to what exactly happened in the conversation between Mr. Kemp and Mr. Sharp, I find that the dispute is most likely an honest misunderstanding. Since the claimant wishes to be seen by an authorized treatment provider for his very serious, permanent injury, it is unreasonable to deny a return appointment for evaluation.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. The defendants shall immediately arrange and authorize an appointment with the University of Iowa Burn Unit.

Signed and filed this 28th day of August, 2017.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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