

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHASE BOLTON,

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE CO. OF  
NORTH AMERICA,Insurance Carrier,  
Defendants.

File No. 21700833.02

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. By filing an original notice and petition for alternate medical care, claimant, Chase Bolton, invoked the expedited procedure of rule 876 IAC 4.48.

The alternate medical care claim came on for telephonic hearing on October 11, 2021. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared through his attorney, Andy Giller. Defendants appeared through their attorney, Tim Wegman.

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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The evidentiary record consists of defendants' exhibits A and B, consisting of two pages. No witnesses testified at the hearing. However, counsel for all parties provided cogent argument and responded to inquiries posed by the undersigned.

At the commencement of hearing, the undersigned clarified with defense counsel about defendants' admission of liability. Defendants admit liability for the alleged July 29, 2021 electrical injury with respect to claimant's right hand and right forearm. However, defendants deny liability and causal connection between the July 29, 2021 injury and any alleged injury to claimant's left buttock, left shoulder, and/or body as a whole (other than the right hand and right arm).

## ISSUE

The issue presented for resolution is whether the claimant is entitled to an alternate medical care order requiring defendants to authorize a neurologist to provide prompt medical care for claimant's condition and injuries.

## FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Chase Bolton sustained an electrical injury that arose out of and in the course of his employment with Quaker Oats on July 29, 2021. Defendants admit injury to the right hand and right forearm as a result of this work injury. (Answer) Defendants deny causal connection of the alleged left buttock, left shoulder, or whole person injuries to the July 29, 2021 electrical injury.

Initial medical records from the defendants' in-plant medical facility demonstrate that the electrical shock event was documented close in time and that an EKG was performed on July 30, 2021. The plant provider was in contact with a physician to discuss the circumstances but no significant medical care was directed or recommended. Claimant followed up with the plant provider for the next month without significant worsening or complaints that sparked a recommendation for outside medical care.

However, claimant continues to experience symptoms and filed a prior alternate medical care proceeding. Both parties agree that defendants scheduled an appointment with a neurologist at PCI in Cedar Rapids. However, the provider cancelled that appointment and claimant was subsequently rescheduled for an appointment with a neurologist, Andrew Peterson, M.D., in December 2021.

Claimant asserts that the offered or authorized care provided by defendants is not prompt. He asserts that requiring him to wait another two months for an evaluation with a neurologist is unreasonable. Defendants assert that they offered prompt care, the rescheduling occurred by the physician, and it is the earliest possible date for evaluation by Dr. Peterson. Defendants acknowledge that an appointment two months into the future is not ideal, but assert that it is difficult to secure an appointment with a neurologist willing to treat a workers' compensation patient any sooner. Defense counsel asserts that defendants have requested to be notified of any cancellations in Dr. Peterson's schedule so claimant can be seen sooner.

Ultimately, after discussion with counsel on the record, the parties have agreed that it is important claimant be evaluated by a neurologist given the nature of his injury. Counsel for the parties also concurred that it is not ideal for claimant to wait another two months until his currently scheduled appointment with Dr. Peterson in December 2021.

The undersigned proposed an alternative resolution that requires further activity by both parties to secure a neurology appointment at the soonest possible date. Specifically, the undersigned proposed an order of this agency that would permit claimant to secure an alternate appointment date with a neurologist. If claimant is able to secure an alternate date with a neurologist, defendants would have ten days after being notified of the appointment to identify an alternative neurologist that could evaluate claimant on or before the date scheduled with the neurologist claimant identified.

If defendants can identify and secure a sooner date than claimant, they will be permitted to direct claimant to the neurologist of their choosing. If defendants cannot identify a prompt appointment on or before that obtained by claimant, defendants would necessarily be forced to authorize the appointment with the provider identified by claimant. If claimant is unable to identify a sooner appointment date and time, the authorized neurologist would remain Dr. Peterson and the December 2021 appointment would be maintained. During conversation on the record, counsel for all parties conceded the proposal was reasonable.

#### REASONING AND CONCLUSIONS OF LAW

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 a claim.

The Iowa Supreme Court has held:

We emphasize that the commissioner's ability to decide the merits of a section 85.27(4) alternate medical care claim is limited to situations where the compensability of an injury is conceded, but the reasonableness of a particular course of treatment for the compensable injury is disputed. . . . Thus, the commissioner cannot decide the reasonableness of the alternate care claim without also necessarily deciding the ultimate disputed issue in the case: whether or not the medical condition Barnett was suffering at the time of the request was a work-related injury.

. . . .

Once an employer takes the position in response to a claim for alternate medical care that the care sought is for a noncompensatory injury, the employer cannot assert an authorization defense in response to a subsequent claim by the employee for the expenses of the alternate medical care.

R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003) (fn 2).

Given the denial of liability with respect to the alleged injuries to claimant's left shoulder, left buttock, and whole person, claimant's original notice and petition for alternate medical care must be dismissed relative to those alleged injuries. Given their denial of liability for those conditions sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks during their period of denial and the claimant is free to choose care for his left shoulder, left buttock, and whole person (other than the right hand and right arm). Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the left shoulder, left buttock and whole person conditions (other than right hand and right arm) sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment 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. Fort Des Moines Hotel, Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment of the left shoulder, left buttock, and/or whole person (other than the right hand and right arm) during their period of denial.

Defendants admit liability and current causal connection for the alleged right hand and right arm injuries. Therefore, it is appropriate to proceed with alternate medical care proceedings relative to those injuries. Iowa Code section 85.27(4). The remainder of these conclusions of law pertain to the right hand and right arm injuries.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

In this case, defendants have authorized treatment for the right hand and right arm injuries with a neurologist, Dr. Peterson. Claimant challenges the reasonableness of the treatment, asserting it is not being offered promptly because the care is scheduled in December 2021. Defendants contend they are offering the earliest appointment date and time offered by their chosen neurologist, Dr. Peterson. The undersigned and all counsel appear to concur that a December 2021 appointment is not ideal and that an earlier appointment would be ideal for treatment of claimant's injuries.

After discussion on the record at the hearing, the undersigned proposed a resolution that all parties conceded was reasonable. Specifically, the undersigned proposed a resolution that allows claimant to try to find an alternate neurologist to evaluate and treat his injury prior to December 2021. If claimant identifies a neurologist that can treat him sooner than the currently scheduled appointment with Dr. Peterson, defendants will have ten (10) days after being notified that an earlier appointment is available to secure an alternate appointment with a neurologist.

If claimant secures an earlier appointment, defendants can elect to authorize the proposed provider. If defendants do not wish to authorize the provider selected by claimant, they will have ten days after being notified of the appointment to identify an alternate neurologist that can evaluate and treat claimant on or before the appointment scheduled by claimant. If defendants cannot identify an earlier date for treatment by a neurologist, they will be required to authorize the appointment scheduled by claimant.

On the other hand, defendants may be accurate and an appointment with a neurologist may not be available before December 2021. Claimant may not be able to secure an appointment date and time with a different neurology provider before the date he is scheduled to be evaluated by Dr. Peterson at PCI. If claimant cannot identify a different neurologist with an earlier appointment date, defendants' selection of Dr. Peterson shall be deemed reasonable, the appointment with Dr. Peterson shall be maintained, and he shall be the authorized neurologist.

#### ORDER

THEREFORE, IT IS ORDERED:

Claimant's original notice and petition is dismissed without prejudice relative to the alleged injuries to his left shoulder, left buttock, and whole person (other than the right hand and right arm).

With respect to the injuries to his right hand and right arm, claimant is given the opportunity to identify a different neurologist to provide treatment to claimant for his right hand and right arm injuries prior to the scheduled appointment with Dr. Peterson at PCI in December 2021.

If claimant is able to identify a neurologist that can provide care sooner than December 2021, he shall notify defendants of the identity of the proposed neurologist and the appointment date scheduled within 48 hours of securing the appointment.

Defendants may elect to authorize the proposed neurologist selected by claimant.

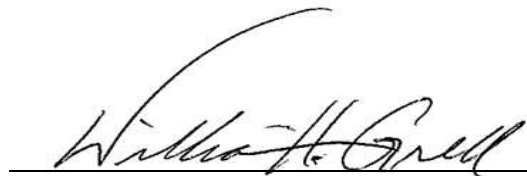
If defendants do not wish to authorize the proposed neurologist identified by claimant, they will have ten days after being notified of an earlier appointment with claimant's selection of a neurologist to identify an alternate provider that can evaluate claimant on or before the date of the appointment with claimant's proposed neurologist.

If defendants are able to identify an alternate neurologist with an earlier appointment date, they will be permitted to retain the right to direct care to that provider.

If defendants are not able to identify an alternate neurologist within the above time constraints, the provider identified by claimant shall be the authorized neurologist for purposes of treating claimant's work injuries to the right hand and right arm.

If claimant is unable to identify a neurologist that can provide evaluation and treatment prior to the appointment scheduled with Dr. Peterson, the appointment with Dr. Peterson shall be maintained and Dr. Peterson will be the authorized neurologist.

Signed and filed this 12<sup>th</sup> day of October, 2021.

A handwritten signature in black ink, reading "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Giller (via WCES)

Timothy Wegman (via WCES)