

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIN BOWDEN,

Claimant,

vs.

CLARINDA REGIONAL HEALTH CTR.,

Employer,

and

ACCIDENT FUND NATIONAL INS. CO.,

Insurance Carrier,  
Defendants.

File No. 20014689.01

## ARBITRATION DECISION

Head Note: 2701

**STATEMENT OF THE CASE**

Claimant, Erin Bowden, filed a petition in arbitration seeking workers' compensation benefits from Clarinda Regional Health Center (Clarinda), employer, and Accident Fund National Insurance Company, insurer, both as defendants. This matter was heard on September 27, 2021, with a final submission date of October 18, 2021.

The record in this case consists of Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 4, Defendants' Exhibits A through D, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

**ISSUES**

1. Whether claimant is entitled to alternate medical care.
2. Costs.

The parties indicated on the hearing report that claimant's entitlement to permanent partial disability benefits was an issue in dispute. At hearing, both claimant and her attorney indicated she was not seeking permanent partial disability benefits at

this time. (Testimony, pp. 29, 42) As a result, claimant's entitlement to permanent partial disability benefits is not an issue in dispute and will not be discussed in this decision.

### **FINDINGS OF FACT**

Claimant was 45 years old at the time of hearing. Claimant graduated from high school. Claimant earned an RN certification in 2001. (TR p. 9)

After receiving her RN, claimant worked for a number different employers for short periods of time. (TR pp. 9-10) From 2006 through 2019 claimant worked as a med-surg nurse at the hospital in Corning, Iowa. She said the work at Corning could be physically demanding, but because of low patient numbers, was generally not too physically taxing. (TR pp. 10-11)

Claimant began at Clarinda in 2019 as a med-surg nurse. She said that as a med-surg nurse in Corning she had 2-3 patients and had 10-15 patients in Clarinda. (TR p. 11)

Claimant's prior medical history is relevant. In 2013 claimant had a work-related injury to her right leg while working for Sequel Youth and Family Services. Claimant had a 7 percent permanent impairment rating to the right lower extremity for that injury. She settled that claim in April 2015 for a 13.5 percent permanent impairment to the lower extremity. (Exhibit C, p. 1; Joint Exhibit 1, p. 2)

In 2016 claimant had chiropractic care for right sacroiliac, right pelvic, right buttock and right leg pain. (JE 2, p. 4)

In 2016 claimant treated for back pain radiating into both extremities. Claimant was assessed in December 2016 with chronic bilateral lower back pain and sciatica. (JE 3, p. 13) A lumbar MRI done in December 2016 showed annular bulging at the L3-4 level. (JE 4, p. 56)

In March 2018 claimant had a lower back injury while turning a patient in bed at the Corning Hospital. (JE 3, p. 15; TR p. 30) Records from November 2018 indicate claimant had worsening lower back pain. Claimant was recommended to have physical therapy and referral to a spine specialist at that time. (JE 3, p. 19)

In August 2019 claimant was treated for lower back pain and numbness in both feet. Claimant was assessed as having chronic lower back pain with bilateral sciatica. (JE 3, p. 21) Lumbar x-rays taken in August 2019 showed moderate degenerative disc disease at L3-4. (JE 4, p. 60)

In December 2019 claimant was treated for lower back pain going into both legs. Claimant had numbness in both feet. She was assessed as having chronic lower back pain with bilateral sciatica. (JE 3, p. 23)

On February 18, 2020, claimant was evaluated by Maen Haddadin, M.D., for a follow-up of chronic back pain and a refill of Celebrex and hydrocodone for pain. (JE 3, pp. 24-25)

Claimant was working at Clarinda on February 22, 2020, when she and a CNA tried to lift a patient who had fallen to the floor. Claimant said the patient weighed approximately 400 pounds. Claimant said as they tried to lift the patient, she heard a cracking sound in her back and felt immediate back pain in the left side. (TR p. 18)

Claimant reported the injury. She finished her shift. Claimant testified she was off most of the next several days, but still had pain in the left side radiating to the left buttocks. (TR p. 19)

On February 28, 2020, claimant was evaluated by Theophile Barley, M.D., for a lower back pain injury after lifting a patient off the floor. Claimant was restricted to no patient transfers. She was assessed as having lumbar discomfort. She was recommended to continue with prescription medication. (JE 5, pp. 70-72)

On March 18, 2020, claimant underwent an MRI of the lumbar spine. It showed lumbar spondylosis with multilevel small disc protrusions. (JE 4, pp. 61-62)

Claimant returned to Dr. Barley on April 3, 2020. Claimant was assessed as having lumbar pain with radiculopathy secondary to multilevel disc protrusions and spondylosis. Dr. Barley found that attempts to lift a patient aggravated claimant's pre-existing back condition. Claimant was restricted to no bending, twisting or lifting more than 10 pounds. Dr. Barley recommended epidural steroid injections (ESI). (JE 5, p. 76)

On April 13, 2020, claimant was evaluated by Jeremiah Ladd, M.D., with the Nebraska Spine and Pain Center. Claimant was found to have bulging discs at L2-L3 through L5-S1. Physical therapy was recommended. Claimant was also recommended to increase dosage of prescription pain medication. Claimant was returned to work with the same restrictions as given by Dr. Barley. (JE 6, pp. 78-87)

Claimant returned to Dr. Ladd on May 26, 2020. Claimant had continued pain radiating to the left thigh. Epidural steroid injections were recommended. (JE 6, pp. 88-92)

Claimant saw Dr. Ladd on June 4, 2020, with continued lower back pain and left lower extremity pain and foot numbness. Claimant was given an ESI on the left at the L4-5 and L5-S1 levels. (JE 6, pp. 95-96)

Claimant saw Dr. Ladd in follow-up on June 24, 2020. Claimant had a 60 percent relief in pain from the ESIs. Claimant was given a trial of returning to work and restricted to lifting up to 40 pounds. (JE 6, pp. 97-102)

Dr. Ladd saw claimant in follow-up on July 28, 2020. Claimant was voluntarily off pain medication and remained active in her job. Claimant was recommended to continue physical therapy. (JE 6, pp. 103-107)

Claimant voluntarily resigned from Clarinda in December 2020. She said she left Clarinda due to issues with co-workers. Claimant began a job with EveryStep Hospice on August 18, 2020, as a full-time hospice nurse. (TR pp. 24, 37; Defendants' Exhibit D, p. 1) At the time of hearing, claimant was still working with EveryStep. She said she works the same hours with EveryStep that she did with Clarinda but earns more money per hour. (TR p. 27)

Claimant saw James Gill, M.D., on August 11, 2020, with Nebraska Spine. Claimant had lower back pain, right side greater than left. Claimant was being seen for a surgical opinion. Dr. Gill advised against surgery. He opined claimant should return to work in a fully duty capacity. He indicated claimant had exhausted conservative measures and was found to be at maximum medical improvement (MMI). Claimant was told to follow-up with her primary care physician regarding weight management. Claimant was returned to work without restrictions. (JE 6, pp. 108-114)

Claimant testified she was told, after meeting with Dr. Gill, that if she had any further issues, she was to follow-up with Dr. Ladd. (TR p. 22) She testified she did not want to eliminate her work restrictions, but Dr. Gill forced her to return to work without restrictions. (TR pp. 34-35) Claimant testified that after her visit with Dr. Gill, when she tried to make a follow-up appointment with Dr. Ladd, she was told that the insurer denied further treatment. (TR pp. 34-36)

In a February 9, 2021 letter, Dr. Gill indicated claimant was at MMI. Dr. Gill last saw claimant on August 11, 2020. Claimant was released to return to work at full duty at that time. He opined claimant had no permanent impairment. (JE 6, p. 115)

In an April 14, 2021 letter, in response to claimant's counsel's inquiries, Dr. Haddadin indicated claimant had chronic back pain from degenerative disc disease. He opined claimant had acute back pain from her February 22, 2020 lifting injury. He opined that disc protrusions and annular tears, found at L3 through S1, shown in the March 18, 2020 MRI, were "most probably" related to her back strain at Clarinda on February 22, 2020. Dr. Haddadin recommended claimant have rest, physical therapy, medications, epidurals and/or referral to a spine specialist. (JE 3, pp. 50-51)

In an April 22, 2021 letter, defendants denied liability for any medical treatment claimant had pursued since her release from Dr. Gill's care on August 11, 2020. (Ex. 1)

On August 27, 2021, claimant underwent a lumbar MRI. It showed degenerative lumbar spine disease. (JE 4, p. 66)

### CONCLUSION OF LAW

The first issue to be determined is if claimant is entitled to alternate medical care consisting of continued treatment for her lower back injury.

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. 6.904(3).

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.

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).

Defendants stipulate that claimant had a lower back injury on February 22, 2020, while at work at Clarinda. Defendants provided treatment to claimant up until her visit with Dr. Gill. Defendants deny liability for any medical treatment after Dr. Gill's August 11, 2020 visit. Claimant contends she still requires ongoing care for the February 22, 2020 back injury.

As noted in the Findings of Fact, claimant saw Dr. Ladd on several occasions between April 13, 2020 and July 28, 2020. (JE 6, pp. 78-107) As detailed above, claimant testified it was her understanding that she saw Dr. Gill for a consult regarding surgery. She testified that after seeing Dr. Gill, she was told she could follow-up with Dr. Ladd. (TR pp. 22-23, 34-35)

Claimant's testimony appears to be corroborated by records from Nebraska Spine. Records from Dr. Ladd on July 28, 2020, suggest claimant would return to him for BMI measurements. (JE 6, p. 105) Records from the July 28, 2020 visit also indicate claimant would follow-up "with physiatry pending evaluation with the surgical staff." (JE 6, p. 106)

Dr. Gill did find claimant at MMI on August 11, 2020. He also found claimant had no permanent impairment. (JE 6, pp. 112, 115) However, Dr. Gill did not indicate in any of the records that claimant should not receive further medical care. Dr. Gill recognized that claimant "... would continue to have lower back pain." (JE 6, p. 112) Arguably, this recognition that claimant would have continued symptoms, even at MMI, suggests claimant would require continued pain management for the February 22, 2020 work injury.

Claimant seeks additional medical care to deal with lower back pain caused by her February 22, 2020 work injury. She testified she was told by Dr. Gill to follow-up with Dr. Ladd with Nebraska Spine. Records from Nebraska Spine appear to corroborate that testimony. Dr. Gill did not opine claimant did not require further medical care for her symptoms from the February 22, 2020 work injury. Claimant has requested additional care from Nebraska Spine for pain management. Defendants have denied that continued care. Given this record, claimant has carried her burden of proof she is entitled to alternate medical care consisting of continued treatment for symptoms for her lower back injury from Nebraska Spine in regard to the February 22, 2020 work injury.

I appreciate defendants' position in this matter. Dr. Gill did opine that claimant had exhausted conservative measures and was at MMI. He also found claimant had no permanent impairment. However, based on the records as detailed above, it is found that claimant has carried her burden of proof she is entitled to alternate medical care consisting of additional pain treatment from Nebraska Spine.

### ORDER

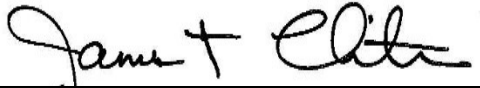
Therefore, it is ordered:

That defendants shall furnish claimant additional medical care for her lower back symptoms with Nebraska Spine.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 29<sup>th</sup> day of October, 2021.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jacob Peters (via WCES)

Laura Ostrander (via WCES)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.