

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUDY LUNDQUIST,

Claimant,

vs.

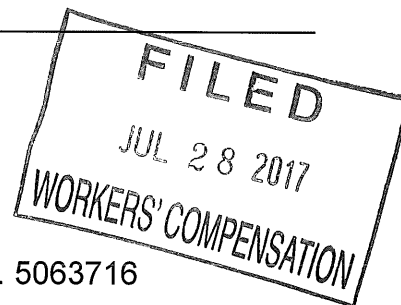
UNITED PARCEL SERVICE, INC.,

Employer,

and

LIBERTY MUTUAL INSURANCE  
CORP.,

Insurance Carrier,  
Defendants.



File No. 5063716

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Judy Lundquist sustained an injury to left knee while working for the defendant, United Parcel Service, Inc. ("UPS"). Lundquist reported the injury to her employer, and she received medical treatment from Dr. Fabiano, including a total knee replacement. On July 17, 2107, Lundquist filed a petition for alternate medical care.

On July 20, 2017, the Division of Workers' Compensation filed a notice of telephone hearing, scheduling a hearing for July 27, 2017, at 1:00 p.m. A copy of the notice was mailed to the parties. Defendant UPS and its insurer, the defendant, Liberty Mutual Insurance Corporation ("Liberty Mutual"), filed an answer and the parties submitted exhibits in advance of the hearing.

A telephone hearing was held on July 27, 2017, at 1:00 p.m. Attorney Paul McAndrew appeared on behalf of Lundquist. Lundquist appeared and testified. Attorney Donna Miller appeared on behalf of UPS and Liberty Mutual. Kristin Alexander appeared on behalf of UPS and Liberty Mutual, but did not testify. Exhibits 1 through 3 and A through C were admitted into the record. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

### FINDINGS OF FACT

Lundquist sustained an injury to her left knee while working for UPS. (Lundquist Testimony) Lundquist underwent a total knee replacement with Dr. Fabiano. (Lundquist Testimony) Lundquist testified her knee swells when she walks three blocks, it becomes stiff and painful, making it difficult to bend her knee and walk. (Lundquist Testimony) Lundquist testified Dr. Fabiano has not offered her any additional treatment. (Lundquist Testimony) Lundquist requested a second opinion.

Lundquist retained Richard Kreiter, M.D., an orthopedic surgeon, in late May 2017, to perform an independent medical examination. (Exhibit 2) Dr. Kreiter noted that in regard to the left total knee replacement Lundquist continues to experience “warmth, swelling, and pain with stairs, inclines, and walking on uneven ground” and has had a fair to poor outcome. (Ex. 2, p. 1) Dr. Kreiter advised Lundquist retire from UPS and noted, “[a] second opinion at the University of Iowa Orthopedic Department would be appropriate. They could then probably advise conservative treatment and do any appropriate testing such as bone scans or repeated x-rays.” (Ex. 2, p. 1)

UPS and Liberty Mutual scheduled an independent medical examination of Lundquist with David Tearse, M.D., an orthopedic surgeon, in June 2017. (Ex. 3) Dr. Tearse issued a letter on June 20, 2017, noting “[f]or the left knee I do believe it is reasonable that she obtain a second opinion from an experienced adult reconstructive surgeon to determine whether there is anything further that can be done to improve her left knee pain and decrease instability.” (Ex. 3, p. 4)

UPS and Liberty Mutual attempted to schedule an examination for Lundquist with Matthew Bollier, M.D., and Nicolas Noiseux, M.D., who both specialize in orthopedic medicine at the University of Iowa Hospitals and Clinics (“UIHC”). Drs. Bollier and Noiseux have declined to examine Lundquist. UPS and Liberty Mutual have not offered any additional medical treatment to Lundquist for her left knee and contend the treatment that has been offered is reasonable. Lundquist credibly testified that she continues to experience pain and swelling in her left knee. (Lundquist Testimony) Lundquist requests that she be referred to the Steindler Clinic.

### REASONING AND CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2015). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

“The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner “may, upon application and reasonable proofs of necessity therefore, allow and order other care.” Id.

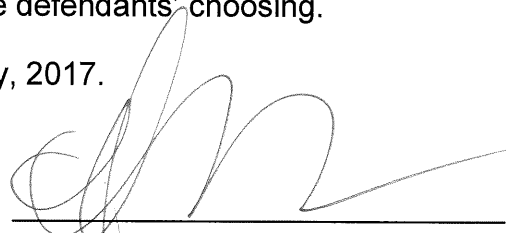
The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). “The employer’s obligation under the statute turns on the question of reasonable necessity, not desirability.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

According to Lundquist’s testimony, Dr. Fabiano has not offered her any additional treatment. (Lundquist Testimony) Lundquist requests a second opinion, which is also recommended by the defendants’ expert, Dr. Tearse, and her expert, Dr. Kreiter. Defendants are not providing care to Lundquist and she remains symptomatic. Defendants have not proposed any alternate care. The evidence presented at hearing supports the care offered by the defendants is unreasonable, ineffective, and inferior. See Pirelli-Armstrong Tire Co., 562 N.W.2d at 437 (finding the care authorized by the employer was ineffective, inferior and less extensive than the care requested because the claimant’s pain had increased and his leg had atrophied during the year he had been treated by the company-approved physician). Lundquist’s petition for alternate care should be granted. Defendants shall authorize a second opinion with an orthopedic specialist of the defendants’ choosing.

ORDER

Claimant’s petition for alternate care is GRANTED. Defendants shall authorize a second opinion with an orthopedic specialist of the defendants’ choosing.

Signed and filed this 28<sup>th</sup> day of July, 2017.



HEATHER L. PALMER  
DEPUTY WORKERS’  
COMPENSATION COMMISSIONER

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