

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEANNA HOWARD,

FILED

Claimant,

JUN 29 2018

File No. 5061878

vs.

WORKERS COMPENSATION ALTERNATE MEDICAL

JOHN DEERE WATERLOO WORKS,

CARE DECISION

Employer,
Self-Insured,
Defendant.

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Deanna Howard. Claimant filed a petition on June 18, 2018. She alleged at paragraph 5 of her petition:

Reason for dissatisfaction and relief sought: Defendant refuses to provide bilateral hand medical treatment for claimant's accepted work injury.

Defendant filed an answer on June 22, 2018. The alternative medical care claim came on for hearing on June 29, 2018. Defendant admitted the occurrence of a work injury on January 19, 2017 and liability for the medical condition sought to be treated by the proceeding. The proceedings were recorded digitally and constitute the official record of the hearing.

By an order filed February 16, 2015 by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

ISSUE

The sole issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of evaluation for ongoing bilateral hand/wrist complaints.

FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

Claimant suffered a stipulated work injury with a date of injury of January 19, 2017; the injury specifically includes conditions of the bilateral hands/wrists.

Claimant suffered with conditions of her bilateral hands and arms which predated the stipulated January 19, 2017 work injury. She underwent bilateral carpal tunnel releases in 2013, right elbow lateral epicondyle debridement in 2015, and left elbow lateral epicondyle debridement with ulnar nerve decompression in 2016. (Exhibit A; Ex. B)

Following the January 19, 2017 work injury, defendant referred claimant for medical treatment. Thomas Gorsche, M.D. performed right carpal tunnel release on September 12, 2017 and left carpal tunnel release on October 5, 2017, both for diagnoses of recurrent carpal tunnel syndrome. (Ex. C; Ex. D)

Due to claimant's ongoing complaints, in March 2018, defendant scheduled claimant for repeat evaluation with Dr. Gorsche. (Ex. E, pages 1-2) Dr. Gorsche evaluated claimant on March 21, 2018 and authored a letter regarding the status of claimant's care on March 31, 2018. Dr. Gorsche opined an additional carpal tunnel surgery would not be to claimant's benefit. He placed claimant at maximum medical improvement (MMI) and imposed permanent restrictions of no use of vibratory tools or air guns. He also opined claimant sustained permanent impairments of 3 percent left upper extremity and 3 percent right upper extremity relative to the bilateral hand/wrist conditions. (Ex. G, p. 1)

On May 11, 2018, claimant's counsel authored correspondence to defendant's counsel. Thereby, claimant's counsel represented claimant continued to report problems with her bilateral hands. Counsel also indicated claimant believed more could be done from a medical standpoint and accordingly, requested additional treatment. (Ex. 1)

On May 30, 2018, claimant's counsel authored a follow up email to defendant's counsel, inquiring as to the status of claimant's treatment request. Defendant's counsel authored a responsive email that same date and requested clarification as to the care sought, as he was otherwise unaware of any pending treatment recommendations. (Ex. H)

At the time of evidentiary hearing, claimant's counsel requested an award of alternate medical care requiring defendant to authorize an additional evaluation for claimant's bilateral hands/wrists. Claimant's counsel acknowledged defendant retained

the right to direct care and accordingly, deferred to defendant to choose the evaluating physician.

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

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).

“Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Claimant suffered a stipulated work related injury involving her bilateral hands/wrists. Defendant provided care, including bilateral carpal tunnel releases in late 2017. When claimant complained of ongoing symptoms, defendant referred claimant back to the surgeon for evaluation; the surgeon declined to recommend further treatment. Instead, the surgeon placed claimant at MMI and offered opinions with respect to the extent of claimant’s permanent impairment and need for permanent restrictions.

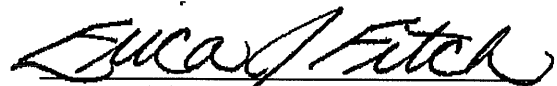
Under these facts, I cannot find defendant has behaved unreasonably in providing claimant medical treatment. To the contrary, defendant offered prompt care with a surgeon. Neither the surgeon, nor any other practitioner, has recommended further care. Defendant has not denied claimant any specific treatment methodology. Given the extensive treatment provided by defendant thus far, claimant bears some burden in establishing that another form of treatment may be available to her in order to warrant an award of alternate medical care. Defendant provided claimant with prompt medical care, reasonably suited to treat her work-related injury, and accordingly, an award of alternate medical care is inappropriate at this time.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is denied.

Signed and filed this 29th day of June, 2018.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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