

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SONYA SIMPSON,

Claimant,

vs.

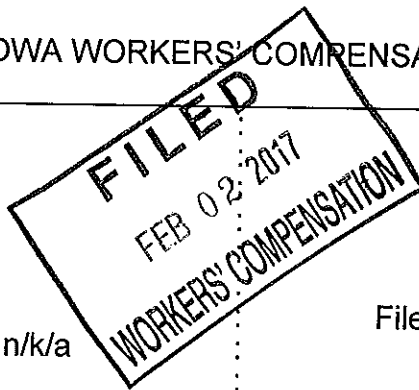
BODEANS BAKING CO. n/k/a
JOY CONE CO.,

Employer,

and

CHUBB GROUP OF INSURANCE
COMPANIES,

Insurance Carrier,
Defendants.



File Nos. 5062906, 5062907

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, Sonya Simpson. Claimant appeared personally and through her attorney, Ron Pohlman. Defendants appeared through their attorney, Stacy Morris.

The alternate medical care claim came before the undersigned for a telephone hearing on February 2, 2017. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

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 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 1-2, which include a total of 3 pages. The record also contains defendants' exhibits A through D, which contain 9 pages. All exhibits were received without objection. Claimant testified on her own behalf. No other witnesses were called to testify.

Claimant filed her original notice and petition in two files. The first, File No. 5062906 alleges an injury date of November 7, 2016. Defendants filed an answer and responded to the petition at the time of the alternate medical care hearing. Defendants deny liability for the alleged November 7, 2016 injury date. The parties were notified at

the commencement of the alternate medical care hearing that the petition for November 7, 2016 must be dismissed because defendants deny liability for the alleged injury on that date. R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190 (Iowa 2003).

ISSUE

The issue presented for resolution is whether the claimant is entitled to an order of alternate medical for surgery to be performed through the previously authorized orthopaedic surgeon, Michael Doarn, M.D.

FINDINGS OF FACT

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

Sonya Simpson, claimant, sustained a right shoulder injury as a result of her work activities for Bodeans Baking Company on November 9, 2016. Claimant reported the injury to the employer and the employer directed her to Mercy Business Health in Sioux City, Iowa. Dr. Cassens was the occupational medicine physician that evaluated claimant at Mercy Business Health.

Dr. Cassens performed an examination of claimant's right shoulder and recommended an MRI be performed. Claimant submitted to the right shoulder MRI. On return visit, Dr. Cassens noted the MRI disclosed a potential rotator cuff tear and he recommended an orthopaedic referral. (Claimant's testimony) Dr. Cassens referred claimant to Dr. Doarn, an orthopaedic surgeon.

Dr. Doarn evaluated claimant on December 6, 2016 and recommended she submit to right shoulder surgery. (Ex. 1) Claimant testified that Dr. Doarn performed a thorough examination, discussed conservative treatment options, and that he answered all of her concerns and questions. Ultimately, claimant desires to have surgery performed pursuant to the recommendations of Dr. Doarn.

Ms. Simpson is very comfortable with Dr. Doarn and desires to have surgery performed by Dr. Doarn. Dr. Doarn offered to perform surgery in December 2016. However, defendants declined authorization for the surgery. Defendants essentially offered no treatment for claimant's condition between Dr. Doarn's December 6, 2016 appointment and their selection of two potentially new orthopaedic surgeons on January 5, 2017. (Claimant's testimony; Ex. A)

Claimant desires to proceed with surgery through Dr. Doarn. Defendants desire to transfer care to Ryan Meis, M.D. Defendants contend that Dr. Doarn is not qualified to perform the recommended surgery and that Dr. Meis is more qualified to perform claimant's right shoulder surgery.

In this case, it is clear that defendants exercised their right to select the authorized medical provider when they selected Dr. Cassens as the authorized occupational medicine physician. Dr. Cassens determined that a referral to an

orthopaedic surgeon was necessary. Dr. Cassens selected Dr. Doarn as the shoulder surgeon to evaluate and treat Ms. Simpson. In making the referral, Dr. Cassens acted as an agent of the defendants and further approval was not required to make Dr. Doarn an authorized surgeon. Therefore, I find that Dr. Doarn was an authorized orthopaedic surgeon when he evaluated claimant on December 6, 2016.

Dr. Doarn evaluated claimant and provided his medical recommendations, which included surgery. Defendants now seek to question or challenge the surgical recommendation. Although defendants have facially authorized surgery in Exhibit A, what they really seek is another surgical opinion to potentially contradict the opinions of the authorized surgeon.

Dr. Doarn recommended shoulder surgery and was ready and willing to perform that surgery on December 23, 2016. However, defendants denied authorization for that surgery. Instead, defendants waited a month from the surgical recommendation until January 5, 2017 to even identify two potential orthopaedic surgeons to provide a second opinion. Defendants introduce no evidence to suggest that the surgery recommended by Dr. Doarn is not reasonable or appropriate. I specifically find that the surgical recommendations made by Dr. Doarn are reasonable and appropriate medical treatment for claimant's condition.

The question posed is whether defendants' revocation of authorization for Dr. Doarn and subsequent selection of new surgeons meets defendants' obligation to provide reasonable and necessary medical care. In this instance, defendants have provided no evidence that suggests the medical treatment recommended by Dr. Doarn is unreasonable, inappropriate, or unnecessarily risky. Instead, defendants facially approve the surgery, just not with the surgeon selected by their own occupational medicine physician.

The only potentially reasonable challenge under these circumstances is a challenge to Dr. Doarn's credentials. Defendants contend that Dr. Doarn is not sufficiently qualified and is not a shoulder specialist. Defendants contend that Dr. Meis is more qualified and should be permitted to evaluate claimant and, if he later deems surgery appropriate, to be the surgeon that performs claimant's shoulder surgery.

Review of Dr. Doarn's credentials, as submitted by defendants at Exhibit C, demonstrates that Dr. Doarn is a board-eligible orthopaedic surgeon. Dr. Doarn performs hand and upper extremity surgery. He received fellowship training in hand and upper extremity surgery, along with a sports medicine residency. Dr. Doarn's website specifically lists his specialties as including: shoulder fracture repair, as well as ligament and tendon surgery. (Ex. C) The proposed surgery includes rotator cuff tendon repair, which seems to be a referenced specialty performed by Dr. Doarn. Certainly, Dr. Cassens believed Dr. Doarn was qualified or he would not have made the referral he did. I find Dr. Doarn to be qualified for the surgery he proposes to perform.

Ultimately, it appears that defendants elected to challenge Dr. Doarn's credentials and to seek an alternate opinion only after Dr. Doarn recommended surgical intervention. Defendants essentially seek to challenge the medical judgment and recommendations of the authorized orthopaedic surgeon, Dr. Doarn. Dr. Doarn's medical recommendations are reasonable. Refusing to authorize the recommended surgery and causing delay in claimant's treatment, while seeking an alternate medical opinion that may or may not concur with Dr. Doarn without any basis to believe an alternate medical opinion would be rendered is not an offer of reasonable care by defendants.

REASONING AND CONCLUSIONS OF LAW

Defendants denied liability in File No. 5062906. 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).

Given the denial of liability for the November 7, 2016 injury date, claimant's original notice and petition for alternate medical care must be dismissed with respect to those claims. Given their denial of liability for the November 7, 2016 injury date, defendants lose their right to control the medical care claimant seeks during their period of denial and the claimant is free to choose that care. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the November 7, 2016 injury date, 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 v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment for the alleged injuries of November 7, 2016 during their period of denial.

Defendants admitted liability for the November 9, 2016 injury date. Therefore, the alternate medical care petition on that claim may proceed. Ultimately, my decision must determine whether defendants are providing reasonable care. "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).

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 1975).

In this case, defendants are attempting to exercise their right to select the medical provider. Realistically, defendants are seeking and attempting to revoke authorization of a previously authorized surgeon in favor of a new surgeon only after the first surgeon, Dr. Doarn, recommends surgery be performed. Claimant seeks an order providing care should remain with and surgery should be provided by the initially authorized orthopaedic surgeon, Dr. Doarn.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

In this instance, I found that the defendants' attempts to challenge the authorized surgeon's medical judgment and opinions caused delay in claimant receiving her recommended surgery. Defendants offer no reasonable basis to believe surgery is not appropriate and defendants at least facially authorize the recommended surgery. Defendants' attempts to transfer care to a new surgeon, as well as the resulting delay in treatment, are not reasonable because I found Dr. Doarn is qualified to perform the surgery he recommends.

ORDER

THEREFORE IT IS ORDERED:

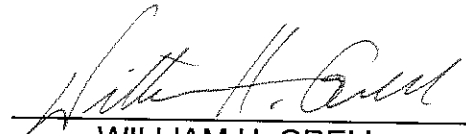
Claimant's petition for alternate medical care in File No. 5062906 is dismissed without prejudice.

If claimant seeks to recover the charges incurred in obtaining care for the injuries alleged in File No. 5062906, for which defendants denied liability, defendants are barred from asserting lack of authorization as a defense to those charges during the period of their denial.

In File No. 5062907, the claimant's petition for alternate medical care is granted.

Defendants shall authorize and pay for the recommended right shoulder surgery to be performed by Michael C. Doarn, M.D.

Signed and filed this 2nd day of February, 2017.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Ron Pohlman
Al Sturgeon
Attorneys at Law
911 – 6th St.
Sioux City, IA 51101
mxjudge@gmail.com
alsturgeon@siouxian.net

Stacy L. Morris
Attorney at Law
10306 Regency Parkway Dr.
Omaha, NE 68114-3743
smorris@ldmlaw.com

Michael S. Roling
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266-2504
mike.roling@peddicord-law.com

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