

On November 7, 2019, claimant was evaluated by Dr. Rosenthal. Claimant had an injection on October 11, 2019. The injection provided temporary relief, but claimant's symptoms had returned. Claimant was assessed as having a right L5-S1 foraminal stenosis with right lower extremity pain. An L5-S1 fusion and an L5-S1 revision decompression were discussed as surgical options. Claimant indicated he wanted to proceed with the revision decompression. Dr. Rosenthal recommended claimant undergo surgery for an L5-S1 decompression. (Ex. 2 and Ex. A)

In a December 4, 2019 email, claimant's counsel gave notice to defendant insurer of claimant's dissatisfaction with defendants' failure to authorize the back surgery recommended by Dr. Rosenthal. (Ex. 3, p. 3)

In a December 5, 2019 email, defendant insurer notified claimant's counsel claimant had an independent medical exam (IME) scheduled with William Boulden, M.D. (Ex. 3, p. 2)

In a December 10, 2019 report, Dr. Boulden gave his opinions of claimant's condition following an IME. Claimant indicated he hurt his back while lifting a 100-pound engine at work. Claimant said standing and walking stairs increased his pain. Dr. Boulden recommended claimant undergo another epidural injection done by an independent pain physician. He noted that if claimant did not get long-term relief from the injection, then surgery was indicated. (Ex. B)

Claimant testified Dr. Rosenthal discussed a fusion and a revision decompression surgery with him. Claimant said he wanted the revision decompression as, he understood, the recovery time was shorter. Claimant testified he wanted the surgery recommended by Dr. Rosenthal, as he was tired of being in constant pain and wanted to return to work.

CONCLUSIONS OF LAW

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 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).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Dr. Rosenthal was authorized to treat claimant. Dr. Rosenthal has recommended claimant undergo an L5-S1 decompression surgery. Dr. Boulden is not an authorized treating physician in this situation. Dr. Rosenthal has actively treated claimant. As a practical matter, he has more familiarity with claimant's medical presentation than does Dr. Boulden. Claimant wants to have the surgery recommended by Dr. Rosenthal.

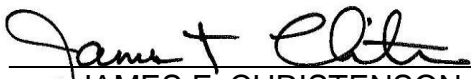
Dr. Rosenthal, an authorized treating physician, recommended claimant have an L5-S1 decompression surgery. For this reason, and for the facts as detailed above, defendants' denial of the surgery is found to be unreasonable. Given this record, claimant has carried his burden of proof he is entitled to the requested care.

ORDER

THEREFORE, IT IS ORDERED:

That claimant's petition for alternate medical care is granted. Defendants shall provide claimant with the surgery recommended by Dr. Rosenthal.

Signed and filed this 6th day of January, 2020.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Steven Durick (via WCES)
Matthew Milligan (via WCES)