

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

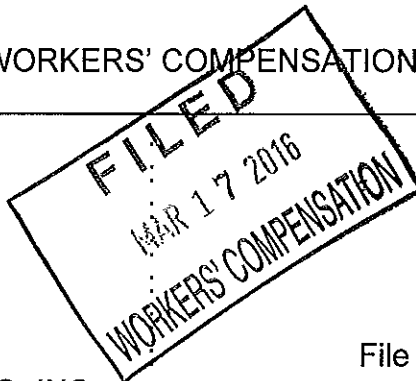
SCOTT LEE,  
Claimant,

vs.

STANDARD FORWARDING CO. INC.,  
Employer,

and

OLD REPUBLIC INSURANCE CO.,  
Insurance Carrier,  
Defendants.



File No. 5055613

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Scott Lee.

This alternate medical care claim came on for hearing on March 16, 2016. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's Exhibit 1, defendants' Exhibit A, and the testimony of claimant. Defendants' exhibit was lettered by the undersigned for clarity of the record.

#### ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment and surgery recommended by Aaron Krych, M.D.

#### FINDINGS OF FACT

Claimant sustained a work-related injury on July 15, 2015 to his left shoulder.

Claimant testified that after receiving conservative care for his shoulder injury, he underwent surgery on or about September 18, 2015. Surgery was performed by David Field, M.D. (Exhibit 1, page 5) Claimant testified his shoulder was worse following surgery.

Claimant testified defendants allowed him to seek treatment at Mayo Clinic. Defendants' counsel, in a professional statement, indicated defendants' insurer did allow claimant to treat at Mayo.

Claimant testified he was seen by Aaron Krych, M.D. at Mayo. On December 14, 2015 claimant was evaluated by Dr. Krych. Claimant noted worse range of motion in the left shoulder following surgery. Dr. Krych recommended an MRI of the left shoulder. (Ex. 1, pp. 1-5)

In a December 24, 2015 letter, Dr. Krych recommended claimant continue physical therapy to overcome adhesive capsulitis. Once claimant had full range of motion of the shoulder, he recommended a left shoulder osteochondral allograft transplantation. (Ex. 1, pp. 6-7)

Claimant testified he understood surgery involved, in part, transplantation of cartilage from a cadaver for the left shoulder surgery. Claimant said it was his understanding that because he is a large person, a large cadaver would be required for the transplant.

In a February 26, 2016 letter Dr. Krych indicated claimant was assessed as having a left shoulder full thickness humeral head articular cartilage lesion. He noted a left shoulder osteochondral allograft transplant was required to ensure claimant's recovery. Dr. Krych indicated Mayo had prior success with patients having this surgery. (Ex. 1, pp. 8-9)

The administrative file indicates that on March 3, 2016, claimant filed a petition for alternative medical care in this matter.

In a March 8, 2016 letter claimant's counsel was informed claimant had an independent medical evaluation (IME) with James Nepola, M.D. and the University of Iowa Hospitals and Clinics. Dr. Nepola is a surgeon specializing in shoulder conditions. (Ex. A)

In a professional statement, defendants' counsel indicated defendants wanted to have claimant evaluated by Dr. Nepola to see if the treatment suggested by Dr. Krych was recommended, or if there were other treatment options for claimant.

Claimant testified he has been contacted by Mayo several times to schedule surgery. He said he attempted to contact defendant insurer's adjuster several times to inquire about the delay in the treatment recommended by Dr. Krych. He said it was not until his attorney became involved that he received any response from defendants

regarding any treatment. Claimant said, it is his understanding he has missed opportunities on two occasions for cadaver donors due to defendants' delay.

#### CONCLUSION OF LAW

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. 6.14(6).

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.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); 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. Id.

An employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

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).

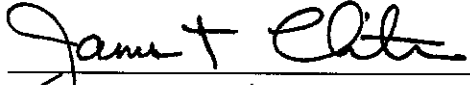
Defendants have authorized claimant to treat with Dr. Krych. Dr. Krych has recommended surgery that includes an osteochondral allograft transplant. Claimant's un rebutted testimony is that defendants have delayed the care recommended by Dr. Krych. The record suggests defendants did not recommend an IME with Dr. Nepola until after claimant's attorney became involved with this matter. Case law before this agency indicates defendants are not allowed to interfere with the medical decisions

made by an authorized physician. Given this record, claimant has carried his burden of proof he is entitled to alternate medical care.

ORDER

Claimant's petition is granted. Defendants are ordered to authorize the care recommended by Dr. Krych.

Signed and filed this 17<sup>th</sup> day of March, 2016.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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