

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VENUS JEFFORDS,

Claimant,

vs.

PEARSON EDUCATION, INC.,

Employer,

and

SAFETY NATIONAL CASUALTY CORP.,

Insurance Carrier,
Defendants.

File No. 22700564.02

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. By filing an original notice and petition for alternate medical care, claimant, Venus Jeffords, invoked the expedited procedure of rule 876 IAC 4.48. Claimant filed the original notice and petition on July 21, 2022. The petition states defendants were served a copy by email that same day. At the hearing, claimant's counsel indicated the copy was emailed to Melissa Schmirler at Sedgwick, the defendants' third-party administrator.

On August 3, 2022, claimant's counsel filed an additional proof of service demonstrating copies of the original notice and petition were mailed to both the employer and to the insurance carrier via certified mail on July 21, 2022. The proof of service filed by claimant shows the employer received and signed for the original notice and petition on July 25, 2022. The insurance carrier received and signed for the original notice and petition on July 26, 2022.

The alternate medical care telephonic hearing was held on August 3, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Claimant appeared personally and through her attorney, Nicholas Cooling. Defendants failed to answer the petition for alternate medical care or appear for the alternate medical care hearing. Defendants are in default and default is entered against defendants for purposes of this alternate medical care 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. Any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibit 1. Claimant testified on her own behalf. No other witnesses testified. Claimant's counsel offered oral argument in support of the petition.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of carpal tunnel release surgery as recommended by Peter Chimenti, M.D.

FINDINGS OF FACT

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

Venus Jeffords, claimant, sustained injuries to her left hand/left upper extremity on or about January 31, 2022, as a result of her work duties with Pearson Education. (Hearing testimony) Ms. Jeffords has worked at Pearson for the last five years. (Id.) She works in packaging. (Id.) This position requires her to grab, pinch, pull, box and scan items, as well as repetitively lift objects weighing up to 30 pounds. (Id.) She works eight-to-ten-hour days. (Id.)

Sometime in 2020, claimant began experiencing numbness, tingling and weak grip strength in her left hand. (Id.; Exhibit 1, page 1) It got steadily worse over time. (Ex. 1, p. 1) Claimant notified Pearson about her left-hand issues. Pearson accepted the claim initially and referred claimant to Work Well in Cedar Rapids for treatment. (Hearing Testimony) Work Well provided conservative care, and then referred claimant to Peter Chimenti, M.D., at Physicians' Clinic of Iowa (PCI) for further treatment. (Id.) There are no treatment notes from Work Well in the hearing record.

On June 23, 2022, claimant was evaluated by Dr. Chimenti. (Ex. 1, p. 1-3) He diagnosed claimant with moderate left carpal tunnel syndrome and recommended a surgical release. (Id. at 2) At that appointment, claimant provided Dr. Chimenti with a description of her job at Pearson. (Id. at 1; Hearing Testimony) Based on this explanation, Dr. Chimenti stated it was "reasonable to claim this is work-related." (Id. at 2) His treatment note indicates the next step was to request work comp authorization to proceed with the surgery. (Id.)

At the hearing, claimant testified she wishes to proceed with the surgery as recommended by Dr. Chimenti, but defendants have not given their authorization. (Hearing Testimony) Claimant's counsel notified Melissa Schmirler, the adjuster for claimant's case, via email that Ms. Jeffords was dissatisfied with the care or lack of care being offered by defendants and wanted to proceed with surgery. (Id.) There is no evidence in the record indicating whether Ms. Schmirler responded to that email. The record is also silent on whether defendants are offering alternative treatment/any care for claimant's injury at this time. Based upon the evidence available to the undersigned,

it appears that defendants have abandoned Ms. Jeffords' medical care for the work-related injury to her left hand and left upper extremity.

Based upon the hearing testimony, claimant gave notice of her dissatisfaction with the lack of care being offered by defendants. (Id.) Claimant has established that defendants' lack of offered care is unreasonable and inferior to the care that Dr. Chimenti has recommended. She has also established that she gave notice of her dissatisfaction with the lack of authorized care.

REASONING AND 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). 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, June 17, 1986).

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Bell Bros., 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

It is the employer's statutory right to select medical providers, and the employer may consider cost and other pertinent factors when exercising that choice. Long, 528 N.W.2d at 124. An employer (typically) is not a licensed health care provider and does

not possess medical expertise. Accordingly, 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. Assmann 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).

Based upon the evidence presented, it appears that Pearson initially accepted the claim and authorized care with Work Well in Cedar Rapids and Dr. Chimenti at PCI. Defendants, however, have not authorized the surgery recommended by Dr. Chimenti, an authorized provider. Nor is there any evidence that they have offered alternative medical care reasonably suited to treat claimant's left carpal tunnel condition. Defendants' failure to offer prompt medical care is unreasonable, and constitutes an abandonment of defendants' obligation to provide claimant medical care under Iowa Code section 85.27. Once an abandonment of care has occurred, the claimant is free to seek care on her own at defendant's cost. See West Side Transport v. Cordell, 601 N.W.2d 691, 694 (Iowa 1999) (the court upheld the holding that the defendant employer had "lost the right to choose the care" and that "allow and order other care" language is broad enough to include treatment by a doctor of the employee's choosing).

I find defendants are not offering medical care reasonably suited to treat the claimant's work injuries. Therefore, claimant has established entitlement to an order directing defendants to authorize the left carpal tunnel release surgery recommended by Dr. Chimenti.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendants shall immediately authorize the left carpal tunnel release surgery recommended by Dr. Chimenti.

Signed and filed this 4 day of August, 2022.


AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Cooling (via WCES)

Pearson Education, Inc.
9200 Earhart Lane SW
Cedar Rapids, IA 52404

Safety National Ins. Co.
1832 Schuetz Road
St. Louis, MO 63146