BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GLADYS ADAMS,

Claimant,

vs.

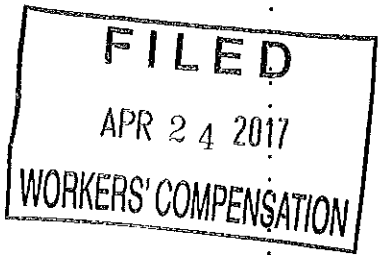
DELTA AIRLINES,

Employer,

and

UNKNOWN,

Insurance Carrier,
Defendants.



File No. 5065812

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. Claimant sustained physical injuries in the employ of defendant Delta Airlines. She now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call and fully submitted on April 24, 2017. The entire hearing was recorded via digital tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner the undersigned was delegated authority to issue final agency action in the proceeding.

ISSUES

Liability is admitted on this claim. The sole issue presented for resolution is whether or not claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by the Delta Airlines on August 1, 2016 when she suffered injuries arising out of and in the course of employment.

Defendants have authorized care. However, the defendants are not following the recommendations of their own selected physician (Tina Stec, M.D.) for treatment. Dr.

Stec has stated that the delays have negatively affected the claimant and "the delays in this case are extreme." (Attachment to the petition)

CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

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, Declaratory Ruling, File No. 866389 (May 18, 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).

The consequence of failing to promptly provide care is the loss of the right to choose the care. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999). I see no authority for the proposition that somehow defendants regain the right to choose the care at some later date. Defendants should have considered the consequences of their actions when they chose to ignore their statutory responsibilities years after the Cordell decision, a decision that affirmed this agencies long standing alternate care precedents dating back to 1995. Unreasonableness can be established by showing 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. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Long v. Roberts Dairy Company, 528 N.W. 2d 122 (Iowa 1995). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong, at 437.

Defendants have failed to promptly provide the care recommended. They have shown a disregard for the health of the claimant. In the case before us, claimant has met her burden and it was found as a matter of fact that the defendants are not providing care without undue inconvenience to the employee.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is granted. Claimant may choose the providers necessary for evaluation and treatment of her work injuries, and defendants shall promptly pay for the treatment.

Signed and filed this 24th day of April, 2017.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Dennis Currell
Attorney at Law
PO Box 1427
Cedar Rapids, IA 52406-1427
dcurrell@qwest.net

Delta Airlines
2121 Arthur Collins Way, S.W.
Cedar Rapids, IA 52404
CERTIFIED AND REGULAR MAIL

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