

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

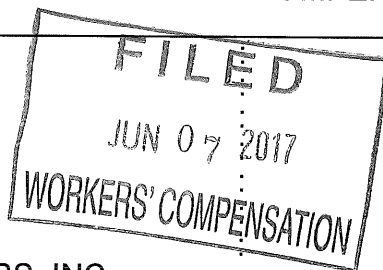
DAVID KRUEGER,

Claimant,

vs.

LOWE'S HOME CENTERS, INC.,

Employer,
Self-Insured,
Defendant.



File No. 5065602

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, David Krueger. Claimant appeared personally and by his attorney, Robert Andres. Defendant appeared through their attorney, Lori Scardina Utsinger.

The alternate medical care claim came on for hearing on June 6, 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 exhibit 1, which includes a total of three pages. The record also includes defendant's exhibit A, which contains 6 pages. Claimant testified at hearing.

ISSUE

The issue presented for resolution is whether the care offered by defendant is unreasonable and claimant is entitled to an order compelling defendant to provide radiofrequency testing/treatment as recommended by the authorized provider, Douglas Sedlacek, M.D.

FINDINGS OF FACT

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

David Krueger sustained a lumbar spine injury that arose out of and in the course of his employment with Lowe's Home Centers on September 29, 2015. As a result of said injury, claimant required medical treatment.

Claimant received authorized medical treatment with Douglas Sedlacek, M.D.

On January 30, 2017, claimant was sent by defendant to see David Field, M.D., for the purpose of an independent medical exam (IME). Regarding further treatment, Dr. Field stated:

It may be in the patient's interest to establish a core strengthening exercise program, perhaps brief guidance with physical therapy for this program would be in his best interest. He does not need household assistance. I think initially he did have a work-related injury which has been treated appropriately, given the issues which have taken place over the last several months.

(Ex. A, p. 3) Claimant testified that at the time of the IME with Dr. Field, he had not yet returned to work and that after the IME, Dr. Field returned claimant to work with restrictions. Claimant testified that he never saw Dr. Field again after the IME.

After returning to work, claimant testified that he had increased pain. As a result, he contacted Dr. Sedlacek, the authorized physician, who provided an injection, followed by a recommendation for radiofrequency treatment based on the pain relief claimant experienced following the injection. Claimant's pain improved following the injection and is noted on May 8, 2017, wherein claimant reported his pain was reduced from "7, down to a 2." (Ex. 1, p. 1)

Defendant has not authorized the radiofrequency treatment recommended by Dr. Sedlacek.

Defendant relies on the opinion of Dr. Field as the basis for the non-authorization of the radiofrequency treatment. Dr. Field, as stated above, recommended "a core strengthening exercise program." (Ex. A, p. 3) It is noted that this recommendation was made before claimant returned to work and experienced an increase in pain and was over three months before Dr. Sedlacek provided the injection and recommended the radiofrequency treatment. It is also noted that Dr. Field was apparently not asked whether or not he would continue to hold the same opinion regarding future treatment, in light of the increased pain claimant experienced upon his return to work and the success of the injection provided by Dr. Sedlacek. Therefore, the most informed opinion concerning appropriate medical care at this point, from the evidence presented is clearly Dr. Sedlacek.

There was no informed medical opinion specifically indicating that, in light of the current circumstances, the radiofrequency treatment is inappropriate or unreasonable.

I find that the failure to authorize the radiofrequency treatment recommended by defendant's own authorized provider, Dr. Sedlacek, is unreasonable. I further find that the injection was beneficial and that the subsequent radiofrequency treatment as recommended by Dr. Sedlacek is reasonable.

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 application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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'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).

I found that the failure to authorize specific treatment in the form of radiofrequency treatment as recommended by the authorized treating physician was unreasonable. I am not persuaded by the opinion of Dr. Field, which recommends only core strengthening exercises. This opinion was given before claimant returned to work and had increased symptoms and before claimant underwent an injection that was beneficial, indicating that radiofrequency treatment would also be helpful.

Defendants are not allowed to substitute their own judgment for that of the treating medical specialists or interfere with their own authorized providers medical judgement.

Claimant has offered evidence demonstrating that the authorized provider is recommending radiofrequency treatment and I have found that the same is reasonable.

Therefore, I conclude that claimant has proven his claim for alternate medical care. I conclude that defendants should be ordered to authorize and pay for the radiofrequency treatment as recommended by Dr. Sedlacek and that the Petition for Alternate Care should be granted.

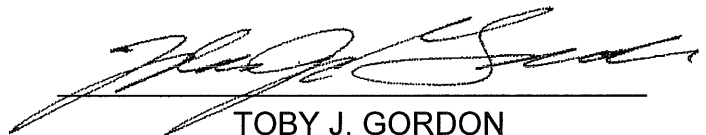
ORDER

IT IS THEREFORE ORDERED:

Claimant's Application for Alternate Care is granted.

Defendant's shall promptly authorize and pay for the radiofrequency treatment recommended by Dr. Sedlacek and schedule an appointment for claimant to move forward with said treatment at Dr. Sedlacek's next available appointment and promptly advise claimant of the date, time and location of said appointment.

Signed and filed this 7th day of June, 2017.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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