

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KHALID ABBAR,

Claimant,

vs.

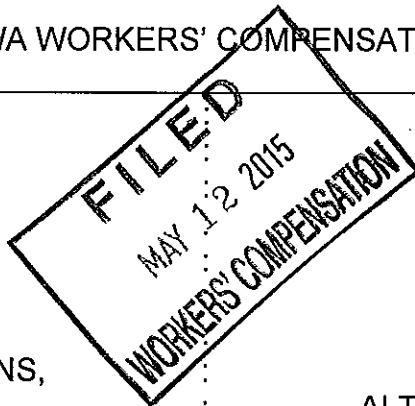
CARGILL MEAT SOLUTIONS,

Employer,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.



File No. 5047212

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, Khalid Abbar. Claimant appeared personally and through his attorney, Christopher Spaulding. Defendants appeared through their attorney, Patrick Waldron, and Company Representative, Janelle Harbor. Hattoun Aljinomui served as the Arabic interpreter at hearing. Claimant originally named and served Crawford & Company as the insurance carrier. By agreement of the parties, the correct carrier is named herein as Insurance Company of the State of Pennsylvania.

The alternate medical care claim came on for hearing on May 11, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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 through 3 and defendants' exhibits 1 through 4, in addition to the sworn testimony of Khalid Abbar. All exhibits were offered without objection and received into evidence.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for left knee surgery.

FINDINGS OF FACT

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

The claimant, Khalid Abbar, has worked as a laborer for Cargill Meat Solutions since 2004. On March 8, 2013, the claimant suffered an injury to his left knee which arose out of and in the course of employment. He is in his early 40's and he communicates through an Arabic interpreter. With the permission of the employer, claimant treated with Bradley Scott, M.D. from Davenport.

Dr. Scott performed two arthroscopic surgeries on the claimant's left knee. Another physician, Timothy Vinyard, M.D., had recommended against surgery. (Defendants' Exhibit 1) The records in the file are limited to ten pages for each party by rule. According to claimant's IME physician, Brian Crites, M.D., Dr. Vinyard had diagnosed claimant with patellofemoral syndrome. (Claimant's Exhibit 2, page 1) Dr. Scott, on the other hand, diagnosed chondral damage to the medial femoral condyle and recommended surgery. (Cl. Ex. 2, p. 1)

The surgeries, ultimately, did not provide much relief. The defendants contend Dr. Vinyard was correct. No surgery should have been completed at all. The claimant testified under oath that the first surgery did work, but his condition worsened significantly during physical therapy. He testified he was reinjured.

Dr. Scott recommended a third surgery. (Cl. Ex. 2, p. 2) After the third surgery recommendation, claimant alleges his treatment with Dr. Scott was discontinued entirely, including several medications he was receiving through workers' compensation.

Since then, claimant has had additional evaluations with Dr. Crites and Mark Kirkland, D.O. Dr. Crites evaluated claimant on December 3, 2014. He recommended "a cartilage restorative procedure such as ACI or OATS . . ." (Cl. Ex. 2, p. 4) Dr. Kirkland concurred with Dr. Vinyard. He believed no surgery ever should have been attempted. (Def. Ex. 2, p. 5) For his part, Dr. Scott, in a "check box" report reversed his earlier opinion and deferred to the opinion of Dr. Kirkland and Dr. Vinyard after reviewing those reports. (Def. Ex. 3)

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. Iowa Code Section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, 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. 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).

The burden is on the claimant to prove that the care offered by defendants is not reasonable. In this case, the defendants discontinued care entirely after Dr. Scott's recommendation for a third surgery. Defense counsel made a valiant attempt to rehabilitate this decision by offering medications through the company physician and physical therapy. These were not offered to the claimant prior to the hearing. This was not reasonable.

Mr. Abbar is a 43-year-old man who has pain and swelling in his knee. He walks with an "antalgic gait" for only five minutes before he has significant pain. The position of the defendants is that no surgical option should have ever been offered to Mr. Abbar because it would not work. The defendants, of course, may be correct. I find, however, based upon the record before me, it is unreasonable to do nothing.

The record is not 100 percent clear at this point regarding what surgery is likely to be the most effective surgery for the claimant's knee condition. At this time, I order the defendants to refer claimant to a specialist who performs the types of procedures

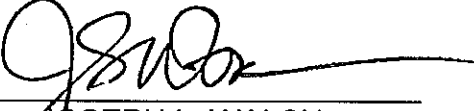
recommended by Dr. Crites (and, originally, Dr. Scott) for a full evaluation and recommendation. I do not order that the physician perform surgery, but rather that a surgeon qualified to perform the types of surgeries recommended, evaluate the claimant, including reviewing the opinions of Dr. Scott, Dr. Vinyard, Dr. Crites and Dr. Kirkland. If further treatment is recommended, the defendants shall authorize it.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED as set forth above.

Signed and filed this 12th day of May, 2015.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Christopher D. Spaulding
Attorney at Law
2423 Ingersoll Ave
Des Moines, IA 50312-5233
chris.spaulding@sbsattorneys.com

Patrick V. Waldron
Attorney at Law
505 - 5th Avenue, Ste. 729
Des Moines, IA 50309
pwaldron@pattersonfirm.com

JLW/sam