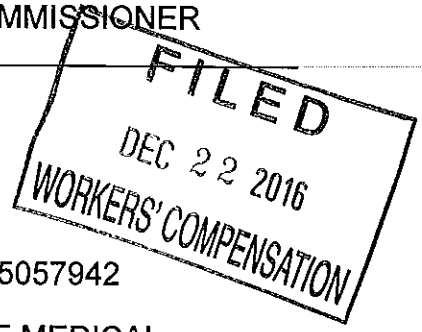
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



CHARLES STEWART, Claimant, vs. AZCO, INC., Employer, and LIBERTY MUTUAL FIRE INS. CO., Insurance Carrier, Defendants.	File No. 5057942 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 a stipulated work injury in the employ of defendant AZCO, Inc., on February 24, 2016. He 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 December 22, 2016. The record consists of claimant's exhibits 1-6, and the testimony of the claimant. The 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.

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

Claimant was employed by AZCO, Inc., on February 24, 2016 when he suffered a left knee injury. The defendants offered care through Jeff A. Fox, M.D. Dr. Fox has nothing further to offer by way of care and has recommended a functional capacity evaluation (FCE) to determine impairment and restrictions. The FCE does not appear to have been performed.

Claimant has requested a second opinion as he still has left knee/leg problems that he believes need addressed. Defendants offered Yogesh Mittal, M.D., and categorized the exam as an 85.39 independent medical evaluation (IME) per exhibit 2. Defendants did not necessarily concede the exam/evaluation was an IME. Dr. Mittal said he needed an MRI. If the evaluation was an 85.39 evaluation then claimant is entitled to the MRI as part of the 85.39. Dr. Fox has stated "I do not feel that an MRI is needed at this time." (Exhibit 1)

CONCLUSIONS OF LAW

> [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.

A second opinion as to a course of treatment is most certainly a part of treatment. The agency commonly orders evaluations for a second opinion in alternate care proceedings. Burr v. Bridgstone/Firestone Inc, File No. 1049010 (Alt Care, September 1999); Tansel v. Umthun Trucking, 1179887 (Alt Care, June 1998); Morris v. Lortex, Inc, File No. 1009285 (Alt Care, April 1998); Dorothy v. Rockwell International, File No. 1045450 (Alt Care, August 1993). Second opinions are a common practice in health care matters outside the workers' compensation setting. The decision on whether or not to pursue a second opinion for surgery is a matter of medical judgment. Doctors, lawyers and for that matter, car mechanics, can reasonably, professionally disagree on a course of action.

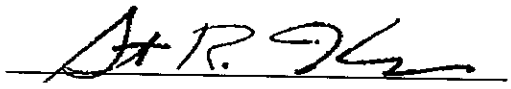
The medical treatment provided by the defendants has reached a dead end. An independent orthopedic surgeon feels an MRI is necessary to evaluate and/or diagnose the claimant. Whether the MRI is part of an 85.39 evaluation, or is a second opinion, it is unreasonable not to provide it.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is approved.

Signed and filed this 22nd day of December, 2016.



STAN MCELDERRY
DEPUTY WORKERS'
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