

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BILLIE V. KING,

Claimant,

vs.

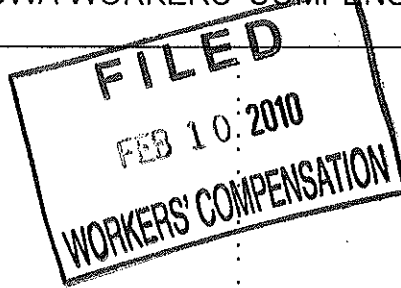
CRETE CARRIER CORPORATION,

Employer,

and

GREAT WEST CASUALTY COMPANY,

Insurance Carrier,
Defendants.



File No. 5032347

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is contested case proceeding under Iowa Code chapters 85A and 17A. This expedited procedure of Rule 876 IAC 4.48, the "alternate medical care" rule, is invoked by claimant, Billie King.

This alternate medical care claim came on for hearing on February 10, 2010. The proceedings were recorded digital, and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's exhibits 1 through 6, defendant's exhibits A through D, and the testimony of claimant, and Martha Krone. Claimant's exhibits were numbered by the undersigned for clarity of the record.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment by Kirk Hutton, M.D., or Andrew Thompson, M.D.

FINDING OF FACTS

Defendants admitted liability for an injury to claimant's left shoulder occurring on November 3, 2007.

Claimant testified his employer told him he could treat with his personal family doctor, William Atherholt, D.O., for his shoulder injury. Claimant testified he has treated with Dr. Atherholt as a family doctor since approximately 1992. Claimant testified Dr. Atherholt treated him conservatively, and then referred him to Huy Trinh, M.D., for further treatment. Dr. Trinh is an orthopedic surgeon.

Claimant testified he had two shoulder surgeries performed by Dr. Trinh. He testified he did not feel Dr. Trinh's treatment and surgeries have done much to help him with his shoulder problems.

In an October 7, 2008, letter, Dr. Trinh indicated claimant continued to complain of pain in the left shoulder. Dr. Trinh found claimant had full range of motion and excellent strength in the left shoulder. Dr. Trinh found claimant had a ten percent permanent impairment to the left upper extremity. He did not anticipate claimant would require further surgery. Dr. Trinh believed claimant did not have any restrictions. (Exhibit 2)

In November of 2008 claimant underwent an independent medical evaluation (IME) with Michael McGuire, M.D. Dr. McGuire was a physician chosen by claimant for the IME. Claimant indicated his shoulder surgeries with Dr. Trinh had helped, but not much. Claimant had continued left shoulder pain. Driving aggravated claimant's shoulder pain. Claimant had full range of motion in the left shoulder with pain. Claimant was found to have a 12 percent permanent impairment to the upper extremity. Claimant was given a 25 pound lifting restriction. (Exhibit B)

On February 4, 2009, claimant was evaluated by Dr. Atherholt. Claimant had constant pain in the left shoulder. Claimant was unable to carry a gallon of milk. Claimant indicated he was depressed because he was unable to work and support his family. Dr. Atherholt recommended claimant treat with an orthopedic specialist like Dr. Hutton. (Exhibit 1)

In a February 27, 2009, letter claimant's counsel requested defendant insurer, Great West Casualty Company (Great West), authorize claimant to treat with Dr. Hutton. (Ex. 3)

In an April 1, 2009, letter to claimant's counsel, defendant's counsel denied authorization to Dr. Hutton. Claimant was directed to return to Dr. Trinh for further care. Dr. Trinh was identified as an authorized treating physician. (Ex. D)

Claimant testified he underwent an IME with Dr. Thompson in the summer of 2009. In a report dated July 22, 2009, Dr. Thompson indicated claimant had continued significant pain in his left shoulder. He recommended claimant undergo an MRI with Nebraska Orthopedic Hospital. Dr. Thompson indicated it was possible that further surgery would have to be done to repair claimant's rotator cuff. (Ex. 4)

In a report, written by claimant's counsel, Dr. Atherholt recommended claimant be referred to Dr. Hutton or Dr. Thompson at Orthopedics West. He also recommended claimant have an MRI performed the report is dated November 13, 2009, Derek Burdeny, M.D., at Nebraska Orthopedic Hospital in Omaha, Nebraska. (Ex. 5) Both Dr. Thompson and Dr. Hutton are orthopedic surgeons.

In a November 25, 2009, letter, claimant's counsel asked defendant's counsel that claimant be authorized to treat with either Dr. Thompson or Dr. Hutton. A request was also made that claimant be authorized to have an MRI done with Nebraska Orthopedic Hospital. (Ex. 6)

In a December 15, 2009, letter the request for authorization to Dr. Hutton or Dr. Thompson was denied. Defendant's counsel indicated he believed Dr. Trinh was the only authorized treating physician for claimant. He also indicated that Dr. Atherholt referred claimant to Dr. Trinh. Defendant's counsel contended that when this referral was made, Dr. Atherholt gave up his authority as a treating physician. (Ex. C)

Claimant testified he has not worked since his injury of November 3, 2007. He testified Dr. Trinh recommended he return to work. He testified his employer has not allowed him to return to work. He testified he has looked for work with other employers, but no one will hire him because of his injured shoulder.

Claimant testified he has constant pain in his left shoulder. He testified that he has loss of strength and range of motion in his left shoulder. He testified that driving aggravates his left shoulder symptoms. He testified he cannot return to driving a truck with his current left shoulder symptoms. He testified he is very unhappy with the outcome of his two shoulder surgeries, and he does not want to return for further treatment with Dr. Trinh. He testified he was dissatisfied with his treatment by Dr. Trinh and has no faith in Dr. Trinh's abilities as a physician.

Claimant testified he has treated approximately eight to ten times with Dr. Atherholt for his shoulder. He testified that to the best of his knowledge, defendants have paid all bills for Dr. Atherholt. He testified he believes Dr. Atherholt is still his authorized physician for treatment.

Martha Krone testified she is a workers' compensation adjuster for Great West. In that capacity, Ms. Krone is familiar with claimant's workers' compensation claim. Ms. Krone testified Dr. Trinh is the authorized physician for claimant. She testified she believes Great West paid a bill for Dr. Atherholt from February of 2009. She testified Great West has not paid a bill for Dr. Atherholt for treatment in November of 2009.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the 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.

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).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, 1 Iowa Industrial Commissioner Reports 207 (1981).

Alternate care included alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

The record indicates Dr. Atherholt was claimant's authorized treating physician. In February of 2009 claimant was evaluated by Dr. Atherholt. Dr. Atherholt referred claimant to Dr. Hutton at that time. The record indicates Great West paid the charges for that visit. The record indicates that at the February 2009 visit, Dr. Atherholt was still considered one of claimant's authorized treating physicians by claimant and defendant.

In an April 2009 letter defendants' counsel indicates Dr. Trinh is an authorized treating physician. There is no indication in the April of 2009 that Dr. Aterholt is no longer considered an authorized physician. It is not until December of 2009 the defendants indicate Dr. Aterholt is no longer a physician authorized to treat claimant.

Dr. Atherholt was considered by both claimant and defendants to be an authorized treating physician for claimant, at least up until April of 2009. In a February 2009 visit, paid for by defendants, Dr. Aterholt referred claimant to treat with Dr. Hutton.

The record indicates claimant had two surgeries with Dr. Trinh. Claimant still has pain, loss of range of motion, and loss of strength in his left shoulder. Claimant's uncontradicted testimony is that his employer has not allowed him to return to work, and he has not been able to find work because of his left shoulder injury. Claimant contends he has had two unsuccessful surgeries with Dr. Trinh and does not wish to return to Dr. Trinh for further treatment. Given this record it is found that there has been a breakdown in the patient physician relationship between claimant and Dr. Trinh.

Dr. Atherholt was an authorized provider of care when he referred claimant to Dr. Hutton. It is also found that there has been a breakdown in the physician/patient relationship between claimant and Dr. Trinh. For these reasons, claimant has proven he is entitled to the requested medical care.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Defendants shall provide claimant care with Dr. Hutton or Dr. Thompson.

Signed and filed this 10th day of February, 2010.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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