

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIO HOLMAN,

Claimant,

vs.

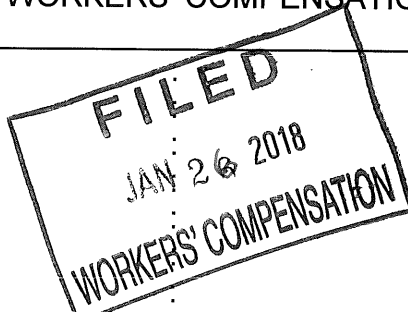
NICHOLS ALUMINUM CASTING &
NICHOLS ALUMINUM, INC.,

Employer,

and

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5042763

ALTERNATE MEDICAL

CARE DECISION

Head Note: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Mario Holman.

This alternate medical care claim came on for hearing on January 26, 2018. The proceedings were recorded digitally 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 a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibit 1, Defendants' Exhibits A and B, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of evaluation and care by Andrew Bries, M.D. and Randal Benson, M.D.

FINDINGS OF FACT

Defendants accept liability for a work injury occurring on October 6, 2012. Claimant was involved in a blast accident that injured his right knee. Records indicate

the blast was strong enough to be heard across the street from the Nichols plant. Records indicate the blast also did structural damage to machinery. (Exhibit 1, pages 7-8)

On October 6, 2012 claimant was recommended to have an EKG due to dizziness and lightheadedness. (Ex. 1, p. 9) Claimant testified he felt dizzy and lightheaded after the accident.

An October 7, 2012 discharge note indicates claimant was released from the hospital with an assessment of having a closed fracture of the patella compartment on the right. (Ex. 1, p. 10)

Records from Iowa Managed Care details that on October 10, 2013 claimant was involved in a car accident that injured his left knee. (Ex. 1, p. 2)

In a December 2, 2013 note Tuvi Mendel, M.D. recommended claimant undergo a patellofemoral compartment arthroplasty for treatment of the right knee. On February 18, 2014, Dr. Mendel performed that surgery. (Ex. 1, p. 3; Ex. A, p. 1)

On September 9, 2015 claimant was assessed as having left knee pain. (Ex. 1, p. 4) It is unclear where this particular record comes from.

In a September 30, 2015 report Dr. Mendel noted he was pleased with claimant's recovery following surgery. Claimant still had some difficulty. Diagnostic surgery, injections and a knee brace were discussed as potential future treatment options. (Ex. A, p. 1)

An October 6, 2015 report, written by Linda Carpenter, RN, with Encore Unlimited, noted claimant told Dr. Mendel his left knee was beginning to bother him due to overcompensating for the right knee. (Ex. 1, p. 5)

In a neuropsychological report, written by Robert Jones, Ph.D. at the University of Iowa Hospitals and Clinics, claimant was found to have normal cognitive ability. Claimant had symptoms of mild depression. He did not meet criteria for a diagnosis of post-traumatic stress syndrome (PTSD), although he had some symptoms associated with PTSD. Claimant was recommended to have psychiatric counseling. (Ex. A, p. 4)

In a December 15, 2016 report, John Brooke, Ph.D. noted he had been counselling claimant. Claimant had nightmares of being blown up. Claimant's psychological status was otherwise good. (Ex. A, p. 5)

In a January 17, 2017 note Dr. Brooke indicated claimant did not meet criteria for assessing PTSD. He did not believe further mental health care would benefit claimant. He found claimant at maximum medical improvement (MMI) for his mental health complaints. (Ex. A, p. 5)

In a November 20, 2017 email, claimant's counsel indicated claimant was dissatisfied with his care. Authorization for treatment of the left knee was requested. The email appears to ask for mental health care, but does not specifically make a request for mental health treatment. (Ex 1, p. 1)

A response for defense counsel indicated claimant had seen three providers for mental health care, and two of the three indicated no further care was warranted. The email asks for specificity regarding further care. (Ex. B, p. 1)

In a November 28, 2017 letter defendants' counsel noted none of the mental health care providers who treated claimant recommended further treatment. Defense counsel also noted defendants would be willing to return claimant to Dr. Mendel for treatment. (Ex. B, p. 2)

In a December 7, 2017 letter defense counsel indicated he found no mention of left knee pain in the medical records. Counsel recommended claimant continue to treat with Dr. Mendel. Defense counsel also asked if claimant wanted another follow-up exam with another mental health care provider. (Ex. B, p. 3)

Claimant testified he had mental health counselling with Francy Ricketts, Ph.D. The record indicates claimant had approximately 90 sessions with Dr. Ricketts. Claimant said he was referred to Dr. Ricketts by a safety manager at Nichols.

Claimant testified he has not seen and M.D. or a D.O for treatment regarding an alleged closed head injury. He testified no mental health care practitioner has indicated claimant has a traumatic brain injury. He said no specialist has recommended he be treated or evaluated for a closed head injury.

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).

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 Decision October 16, 1975).

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 Rule of Appellate Procedure 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.

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 Decision June 17, 1986).

Claimant seeks alternate medical care for his left knee and for an alleged traumatic brain injury.

Regarding the left knee injury, claimant testified Dr. Mendel knew, or should have known, of an alleged left knee injury. Claimant testified Dr. Mendel seemed he did not want to deal with any alleged left knee problems.

The record does not indicate Dr. Mendel was authorized to treat claimant for left knee complaints. The record suggests claimant may have a left knee injury as a result of overuse from guarding the right knee. The record indicates defendants are willing to return claimant to Dr. Mendel for further evaluation of the left knee.

There is no evidence Dr. Mendel was authorized to treat claimant's left knee. Defendants indicate they are willing to return claimant to Dr. Mendel for evaluation and potential treatment of the left knee. There is little evidence in the record that the care given by Dr. Mendel was unreasonable. Given this record, and given that defendants are willing to return claimant to Dr. Mendel, claimant has failed to carry his burden of proof the care offered for claimants' knee injury is unreasonable.

Regarding the request to have care authorized with Dr. Benson, claimant has seen at least four mental health care providers. Claimant underwent a neuropsychological evaluation with Dr. Jones. He had approximately 90 counselling sessions with Dr. Ricketts. He was also evaluated and treated by Alex Hogg and Dr.

Brooke. None of these experts have assessed claimant as having a traumatic brain injury. None of these experts have recommended claimant have evaluation or treatment for a traumatic brain injury. There is little evidence in the record claimant has a traumatic brain injury. Given this record, claimant has failed to carry his burden of proof he is entitled to alternate medical care with Dr. Benson.


I have empathy for claimant's situation. The record indicates he was involved in a significant blast accident. Claimant has struggled with nightmares. Although he has been assessed with not having PTSD, the record indicates he has had some symptoms similar to that of PTSD. It is admirable that claimant has struggled and apparently worked hard to overcome nightmares and other mental health issues associated with the blast injury.

Given this record, claimant has failed to carry his burden of proof the care offered by defendants is unreasonable. Claimant's petition for alternate medical care is denied.

ORDER

THEREFORE, it is ordered claimant's petition for alternate medical care is denied.

Signed and filed this 26th day of January, 2018.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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