BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRAD KLAUENBERG,

Claimant,

vs.

WALDINGER CORPORATION,

Employer,

and

CHUBB INDEMNITY COMPANY,

Insurance Carrier,
Defendants.

File No. 5067435

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, Brad Klauenberg. Claimant appeared personally and through his attorney, Gary Mattson. Defendants appeared through their attorney, Robert Gainer.

The alternate medical care claim came on for hearing on February 25, 2019. 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 evidentiary record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibits A, page 4 and Exhibit B, and claimant's testimony during the telephonic hearing.

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Brad Klauenberg, sustained an injury to his right shoulder on June 2, 2018, which arose out of and in the course of his employment with Waldinger Corporation. Defendants sent Mr. Klauenberg for treatment with Joseph A. Brunkhorst, III, D.O. at Des Moines Orthopaedic Surgeons, P.C. Dr. Brunkhorst provided conservative treatment which included at least one injection and physical therapy. The treatment was only slightly beneficial. Dr. Brunkhorst recommended Mr. Klauenberg undergo right shoulder partial rotator cuff tear surgery; Mr. Klauenberg wanted to proceed with the operation. Dr. Brunkhorst was scheduled to perform the surgery on February 8, 2019. Around 2:15 p.m. on February 7, 2019 the defendants notified Mr. Klauenberg that they were cancelling the surgery with the authorized treating physician, Dr. Brunkhorst. Mr. Klauenberg is seeking to proceed with the recommended surgery with Dr. Brunkhorst. (Testimony; Caimant's Exhibits 1 & 2)

At the request of the defendants, Mr. Klauenberg saw Timothy R. Vinyard, M.D. at Iowa Ortho for a second opinion on February 13, 2019. Dr. Vinyard recommended right shoulder arthroscopic rotator cuff repair, biceps tenodesis, subacromial decompression, and distal clavicle excision. (Testimony; Cl. Ex. 2) Dr. Vinyard's notes state: "He was scheduled to have RIGHT shoulder rotator cuff repair surgery with Dr. Brunkhorst, though there were complications and the surgery was canceled when Dr. Brunkhorst was going to have the patient be off of work for 7 days following the surgery." (Cl. Ex. 1)

Defendants assert that they have authorized the surgery with Dr. Vinyard and therefore have offered prompt and reasonable care. I do not find defendants' argument to be persuasive. I find that Dr. Brunkhorst is an authorized treating physician. He recommended and scheduled surgery for Mr. Klauenberg's right shoulder injury. I find that when defendants cancelled the scheduled surgery which was to take place over two weeks ago, they interfered with the medical judgment of its own treating physician. I find that interfering with the medical judgment of its own treating physician is not providing reasonable treatment.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [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.

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).

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).

Based on the above findings of fact, I conclude that when defendants cancelled the surgery with the authorized treating physician they interfered with the medical judgment of its own treating physician. I further conclude that defendants have failed to

provide reasonable treatment. I conclude that claimant's petition for alternate medical care is granted

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize the right shoulder surgery as recommended by authorized treating physician, Dr. Brunkhorst. The defendants shall authorize the treatment with Dr. Brunkhorst.

Signed and filed this 26th day of February, 2019.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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