

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARVIN STRABALA,  Claimant,  vs.  SPEE DEE DELIVERY SERVICE,  Employer,  AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA,  Insurance Carrier,  Defendants.	File No. 1662079.01           ALTERNATE CARE DECISION           Headnotes: 2701
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**STATEMENT OF THE CASE**

On August 28, 2023, Marvin Strabala filed an application for alternate care under Iowa Code section 85.27 and agency rule 876 IAC 4.48. The defendants, employer Spee Dee Delivery Service and insurance carrier American Casualty Company of Reading, Pennsylvania, did not file an answer. Instead, they responded to the petition on the record during the hearing under Rule 876 IAC 4.48(12).

The undersigned presided over an alternate care hearing held by telephone and recorded on September 8, 2023, at 10:30 a.m. That recording constitutes the official record of the proceeding under agency rule 876 IAC 4.48(12). Strabala participated personally and through attorney Andrew Giller. The defendants participated through attorney L. Tyler Laflin. The record consists of:

- Claimant's Exhibits 1 through 2; and
- Hearing testimony from Strabala.

**ISSUE**

The issue under consideration is whether Strabala is entitled to alternate care in the form of care with an orthopedic surgeon at the University of Iowa Hospitals and Clinics (UHC).

## FINDINGS OF FACT

Strabala filed a petition for alternate medical care regarding alleged injuries to the right upper extremity and body as a whole arising out of and in the course of his employment with Spee Dee on November 26, 2022. The defendants authorized care with Shirley Pospisil, M.D., at St. Luke's Work Well Solutions. (Ex. 1) After magnetic resonance imaging (MRI) of Strabala's right shoulder, on or about June 26, 2023, Dr. Pospisil requested approval for him "to go to an orthopedist for evaluation and treatment." (Ex. 1, p. 1)

The defendants took no action on Dr. Pospisil's referral and requested approval. Consequently, on August 14, 2023, claimant's counsel emailed Anna Chmielecki, a workers' compensation claims specialist, regarding the arrangement of care with an orthopedic surgeon in accordance with Dr. Pospisil's referral and requested a response "by tomorrow." (Ex. 2, p. 3) Chmielecki replied on August 16, 2023, "I will approve a onetime visit with the Orthopedic [sic]." (Ex. 2, p. 3) Claimant's counsel asked if there was a specific surgeon they were authorizing in a reply email that same day, but there is an insufficient basis in the evidence from which to conclude Chmielecki replied with the requested information. (Ex. 2, p. 1)

The defendants took no action after communicating their authorization of an appointment with an orthopedic specialist. On August 24, 2023, claimant's counsel emailed Chmielecki and requested, "Please let me know if an appointment has been made or where [Strabala] needs to call to make an appointment." (Ex. 2, p. 3) On August 28, 2023, Strabala filed the petition concerning application for alternate care seeking care with an orthopedic surgeon in accordance with Dr. Pospisil's referral.

After Strabala filed the petition, the defendants authorized care with Matthew Bollier, M.D., an orthopedic surgeon at UIHC. (Testimony) After learning of the referral, on or about September 6, 2023, Strabala telephoned UIHC to attempt to schedule the appointment. (Testimony) When he informed the UIHC staff person with whom he spoke that the care was related to a workers' compensation claim, the staff person informed him that the insurance carrier would have to arrange the care and provide medical information relating to it and that he could not schedule the care on his own. As of the time of hearing, the appointment with Dr. Bollier had not been scheduled.

## CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be

reasonably suited to treat the injury without undue inconvenience to the employee.” Iowa Code § 85.27(4) (emphasis added).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee’s discontent with the employer and if the parties can’t reach an agreement on alternate care, “the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. “Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because “the employer’s obligation under the statute turns on the question of reasonable necessity, not desirability,” an injured employee’s dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

Dr. Pospisil’s referral to an orthopedic surgeon occurred on June 26, 2023, and the defendants took no action on it until Strabala retained claimant’s counsel, who inquired about whether they would act on the referral on August 14, 2023. The defendants communicated to claimant’s counsel on August 16, 2023, that one appointment would be approved but no such care was arranged between then and August 24, 2023, when claimant’s counsel followed up. After the defendants failed to respond to this follow-up inquiry, Strabala filed the petition, two months to the day of Dr. Pospisil’s referral.

After Strabala filed the petition, the defendants authorized care with Dr. Bollier at UIHC. However, no appointment had been scheduled as of the time of hearing because Strabala cannot schedule an appointment under UIHC procedures; the insurance carrier must do this.

The defendants argue that arranging care with a doctor at a specific provider satisfies their responsibilities under section 85.27(4). The defendants contend they cannot be held responsible for UIHC’s procedures regarding workers’ compensation claimants. They have authorized the care and that is enough under the law.

Had the defendants acted promptly after receiving Dr. Pospisil’s referral, it is more likely than not Strabala would have already received care in accordance with the referral despite any additional procedures required by UIHC for workers’ compensation claimants. The defendants’ failure to act promptly is a significant factor in causing the delay in Strabala’s receipt of treatment for the work injury. Because of the two months of inaction by the defendants, there was no appointment scheduled for Strabala to see an orthopedic surgeon as of the time of hearing. And there likely will not be one for many more weeks.

This is why the defendants’ position is unavailing. Section 85.27(4) provides “the employer is obliged to furnish reasonable services and supplies to treat an injured

employee” and that “the treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Authorization of care alone—without the arrangement of tangible services and supplies to treat the injury promptly and without undue inconvenience to the employee—fails to fully satisfy an employer’s responsibility under the statute. There is no treatment without an appointment, which makes authorization of care only part of the equation under the statute. A significant factor in Strabala not receiving care between the June 26, 2023 referral by Dr. Pospisil and the September 8, 2023 hearing was the defendants’ inaction until after the petition was filed. Consequently, the defendants’ delay in authorizing and arranging treatment for the work injury is unreasonable under the statute.

### ORDER

Under the above findings of fact and conclusions of law, it is ordered:

- 1) Strabala’s application for alternate medical care is GRANTED.
- 2) Within 30 days of the date of this decision, the defendants shall arrange for an appointment with Dr. Bollier at UIHC or another orthopedic surgeon for treatment of Strabala’s right shoulder injury.

On February 16, 2015, the Iowa workers’ compensation commissioner issued an order delegating authority to deputy workers’ compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 11th day of September, 2023.



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BENJAMIN G. HUMPHREY  
Deputy Workers’ Compensation Commissioner

The parties have been served, as follows:

Andrew Giller (via WCES)

L. Tyler Laffin (via WCES)