

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JOSEPH NICHOLAS KIRCHNER,

**FILED**

Claimant,

JUN 03 2016

vs.

WORKERS COMPENSATION

File No. 5061077

AMSTED RAIL COMPANY, INC,

ALTERNATE MEDICAL

Employer,

CARE DECISION

and

ESIS,

Insurance Carrier,  
Defendants.

HEAD NOTE NO: 2701

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STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Joseph Kirchner sustained an injury his low back on December 18, 2014, while working for the defendant, Amsted Rail Company, Inc. ("Amsted") On May 19, 2016, Kirchner filed a petition for alternate medical care under Iowa Code section 85.27 and rule 876 IAC 4.48. Kirchner requested the defendants, Amstad and ESIS, approve repeat magnetic resonance imaging. Defendants refused to authorize the magnetic resonance imaging.

On May 23, 2016, this division filed a notice of telephone hearing, scheduling a telephone hearing for June 3, 2016, at 8:30 a.m. A copy of the notice was mailed to the parties.

A telephone hearing was held on June 3, 2016 at 8:30 a.m. Attorney Nicholas Pothitakis represented Kirchner. Kirchner appeared and testified. Attorney William Lamson represented the defendants. Exhibits A, B, and 1 were admitted into the record. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

## FINDINGS OF FACT

Kirchner has worked for Amsted, which manufactures train wheels, for the past three years. (Kirchner Testimony; Exhibit A-1) On December 18, 2014, Kirchner was at work and when he picked up an object weighing approximately 70 pounds, he felt three pops in his back. (Kirchner Testimony) Kirchner promptly reported the injury to his employer and he received medical care. (Kirchner Testimony) Prior to the injury Kirchner had not had any problems with his low back and had not received any medical treatment for his low back. (Kirchner Testimony)

Kirchner was referred by the defendants to Rachel Oliverio, D.O., an occupational medicine physician. (Ex. A-2) Dr. Oliverio diagnosed Kirchner with a lumbar strain and ordered physical therapy. (Ex. A-2) Magnetic resonance imaging conducted on January 9, 2015, was interpreted as normal, and Kirchner was referred to Robert Foster, M.D., an orthopedic surgeon. (Ex. A-2) Dr. Foster placed Kirchner on "Med x." (Ex. A-2; Kirchner Testimony)

Kirchner testified Dr. Foster found he was "75 percent below average," but released him to full-duty, and told him he had nothing to offer him. (Kirchner Testimony) Defendants correctly note that Dr. Foster's records were not submitted as part of the exhibits for the hearing, other than Exhibit 1.

Kirchner attended an independent medical examination with Richard Neiman, M.D., on March 2, 2016. (Ex. A-1) Dr. Neiman's report indicates he reviewed the January 2015 magnetic resonance imaging of Kirchner's lumbar spine, and noted:

He has significant narrowing of the disk at the L5-S1, but I do not see evidence of disk protrusion. Current time [sic], I think he has injured the disk at L5-S1 basically kind of a disk [sic], which undergone [sic] bulging if pressure is applied. Using analogy [sic], it is a softened area of tire [sic]. You push on the hood, the area balloon out [sic]. At this stage, I would suggest repeat [sic] MRI scan to further define the pathology. It is possible he could have increasing difficulties with the new injury occurred [sic] in February 2015.

(Ex. A-3)

Kirchner testified he has sustained two injuries at work since the December 2014 injury, one injury where a chair broke and he fell and landed on his back, and another where he was lifting a bucket and injured his shoulder. (Kirchner Testimony) Kirchner reported he received medical treatment for the injuries, but was released without restriction. (Kirchner Testimony)

Defendants requested an opinion letter from Dr. Foster after receiving Dr. Neiman's report. (Ex. 1) Dr. Foster noted he had reviewed the January 2015

magnetic resonance imaging and agrees with the radiologist at the imaging is normal. (Ex. 1) Dr. Foster found:

Clearly there is some misunderstanding of the MRI interpretation of Mr. Kirchner. The patient has a sacralized L5 vertebral body. Thus the L5-S1 disc disease is atretic. When looking at his plain x-rays the L5 transverse processes are broad and anchored to the pelvis. No motion occurs between L5 and S1. As such the L5-S1 disc space is immune to injury and normal except for its diminished height because of failed development. The remaining disc signals are entirely normal at L5-S1 disc [*sic*] and otherwise as are the other levels. In addition there is no evidence of any nerve root compression noted MRI [*sic*] to explain the patient's varied complaints. Based on an entirely normal MRI and a [*sic*] unreliable physical exam I see no reason that any impairment could be applied. Furthermore I see no reason for an MRI to be repeated.

(Ex. 1)

#### REASONING AND CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2015). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. *Id.* "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." *Id.* § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. *Id.* If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." *Id.*

The employee bears the burden of proving the care authorized by the employer is unreasonable. *R.R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 196 (Iowa 2003). The determination of whether care is reasonable is a question of fact. *Long v. Roberts Dairy Co.*, 528 N.W.2d 122 (Iowa 1995).

Kirchner has requested repeat magnetic resonance imaging of his lumbar spine, as recommended by Dr. Neiman. Defendants contend Dr. Neiman's report does not provide whether he reviewed Kirchner's complete medical records, or what records he reviewed, other than the January 2015 magnetic resonance imaging report, and that Kirchner has not established the defendants' refusal to authorize the repeat magnetic resonance imaging is unreasonable. Dr. Neiman's report does not identify the medical records he reviewed, if any, other than the January 2015 magnetic resonance imaging. Defendants provided a report from Dr. Foster of his opinions of the January 2015

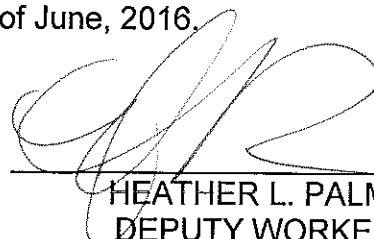
magnetic resonance imaging and Kirchner's request for repeat imaging. Dr. Foster's explanation is detailed, and he does not believe repeat imaging is warranted. Kirchner is not alleging new or increased symptomology in his lumbar spine from the date of the January 2015 magnetic resonance imaging. He has not established the defendants' refusal to authorize the repeat magnetic resonance imaging is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Kirchner's petition for alternate care is DENIED.

Signed and filed this 3<sup>rd</sup> day of June, 2016.

  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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