BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID MARSHALL, Claimant, vs. QUAKER OATS COMPANY, CEDAR RAPIDS PLANT, Employer, and INDEMNITY INSURANCE CO. OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 20001898.03 ALTERNATE MEDICAL CARE DECISION Head Note No: 2701

STATEMENT OF THE CASE

On July 7, 2021, claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The defendants did not file an answer; however, during the hearing, the defendants verbally confirmed that they accepted liability for the right shoulder injury related to the October 25, 2019, work incident.

The undersigned presided over the hearing held via telephone and recorded digitally on July 19, 2021. That recording constitutes the official record of the proceeding under 876 Iowa Administrative Code 4.48(12). Claimant participated through his attorney, Casey Steadman. The defendants participated through their attorney, Timothy Wegman. The evidentiary record consists of six pages of exhibits from the claimant, labeled 1 and 2. The defendants indicated that they did not receive a copy of the alternate care petition. They were allowed the opportunity to present exhibits at the hearing, but declined to present any exhibits. All of the exhibits were received into evidence without objection.

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, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to an order for surgical authorization.

FINDINGS OF FACT

Claimant, David Marshall, sustained a work injury to his right shoulder and/or whole body on October 25, 2019. The work incident arose out of, and in the course of his employment with the defendant employer. Defendants accepted liability for the October 25, 2019, right shoulder injury verbally at hearing.

The claimant was injured while hitting the side of a railroad car with a mallet. (Claimant's Exhibit 1:1). He reported immediate right shoulder pain. (CE 1:1). He had a corticosteroid injection to the right shoulder on January 13, 2020. (CE 1:1). He then had an MRI. (CE 1:1). The MRI showed a superior labral tear with biceps tenotomy and AC joint arthropathy. (CE 1:1). Dr. Bollier performed a right shoulder arthroscopic surgery on May 6, 2020. (CE 1:1). During the surgery, Dr. Bollier performed a capsular release, debridement, subacromial decompression, distal clavicle excision, and biceps tenotomy. (CE 1:1). Mr. Marshall had postoperative physical therapy. (CE 1:1). He continued to complain of pain. (CE 1:1). In July of 2020, Mr. Marshall had glenohumeral and subacromial injections, which provided 40 percent pain relief. (CE 1:1). Mr. Marshall achieved maximum medical improvement ("MMI") on August 31, 2020, but it was noted that he may require additional injections and a possible arthroplasty. (CE 1:1).

Mr. Marshall complained of continued pain. He requested additional care in late 2020. At one time, he filed an alternate care petition. The claimant dismissed that petition on March 12, 2021, as the requested care was authorized. At that time, Brendan Patterson, M.D., became an authorized treating physician.

Dr. Patterson examined Mr. Marshall on March 31, 2021. (CE 1:1-5). Mr. Marshall told Dr. Patterson that he had constant pain in the anterior right shoulder, which he rated 8 out of 10. (CE 1:1). Upon abduction, the pain extended into the lateral shoulder. (CE 1:1). He took Tylenol to alleviate his pain. (CE 1:1). Physical examination of the shoulder revealed tenderness to palpation, especially over the anterior, superior, and posterior aspects of the shoulder. (CE 1:3). He had good strength in the shoulder, but showed a reduced range of motion. (CE 1:3). Dr. Patterson reviewed the images from the previous surgery, and had a discussion with Mr. Marshall. (CE 1:4). Dr. Patterson noted that the images showed a full-thickness cartilage defect in the right shoulder. (CE 1:4). In light of this, Dr. Patterson recommended treatment of either repeat corticosteroid injections or a right shoulder arthroplasty. (CE 1:4). Mr. Marshall told Dr. Patterson that he wished to proceed with surgery due to continued pain and limited use of the right arm. (CE 1:4). Dr. Patterson noted that surgery was "currently waiting approval by Workers' Compensation." (CE 1:4). Upon approval by workers' compensation, the plan was to perform a CT scan, lay out a blueprint for surgery, and proceed. (CE 1:4). Dr. Patterson concluded his record by stating, "[i]f he is to elect for surgery he would require preoperative clearance with surgical comanagement as well as CT scan and another visit with us to discuss things further." (CE 1:5).

On June 30, 2021, claimant's counsel sent a letter to counsel for the defendants indicating that the claimant wished to proceed with a right shoulder arthroplasty. (CE 2:6). The defendants alleged that this was their first indication that the claimant desired to proceed with surgery. During the hearing, the parties indicated that the defendants authorized a return visit to Dr. Patterson with an appointment on August 25, 2021.

CONCLUSIONS OF LAW

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

> For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"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)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, Inc., File No. 866389 (Declaratory Ruling, May 19, 1988). 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).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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 cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. 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; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. 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.

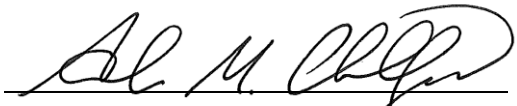
In this matter, the medical records in evidence indicate that the claimant desires to proceed with a right shoulder arthroplasty. Dr. Patterson, an authorized treating physician, laid out a course of care to proceed with the surgery. This includes "preoperative clearance with surgical comanagement as well as CT scan and another visit with us to discuss things further." (CE 1:5). This indicates that there are other appointments and steps to be taken before proceeding to surgery.

The parties represented that the claimant is to return to Dr. Patterson's office on August 25, 2021, for additional examination. Based upon this representation, and the note from Dr. Patterson in Claimant's Exhibit 1, the care provided to the claimant is reasonable. Furthermore, scheduling a follow up appointment with Dr. Patterson is reasonable considering the doctor's plan of care noted during the March 31, 2021, visit. Based upon the foregoing, the claimant failed to meet their burden that the currently authorized care is unreasonable.

IT IS THEREFORE ORDERED:

The claimant's petition for alternate care is denied.

Signed and filed this 19th day of July, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Casey Steadman (via WCES)

Timothy Wegman (via WCES)