

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELLY M. BOULWARE,

Claimant,

vs.

SABRE INDUSTRIES,

Employer,

and

ARCH INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 19700299.01

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 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, Kelly Boulware.

This alternate medical care claim came on for hearing on October 2, 2019. 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 Exhibits 1, Defendants' Exhibit A-B, and the testimony of claimant. Defendants' exhibits were lettered by the undersigned for clarity of the record.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of a referral to the University of Nebraska Medical Center.

FINDINGS OF FACT

Defendants accept liability for an injury occurring on February 6, 2019.

Claimant injured her right shoulder while unloading materials at work. Claimant was authorized to treat with Tri-State Specialists (Tri-State). Claimant underwent

treatment for her injury including injections to the right shoulder, physical therapy, medication, and various diagnostic testing. (Exhibit A, pages 2-7)

On June 12, 2019 claimant underwent an independent medical evaluation (IME) with Scott McPherson, M.D. Dr. McPherson is not a treating physician. Dr. McPherson recommended additional treatment for claimant including a trial of Medrol/Dosepaks, gabapentin, and a right shoulder injection. (Ex. A., pp. 9-10)

On August 27, 2019, claimant was evaluated at Tri-State by Gary Tillman, CRNA. Nurse Anesthetist Tillman recommended claimant be referred to the Orthopedic Department at the University of Nebraska Medical Center. (Ex. 1)

Claimant testified she was given three injections for pain in her right shoulder at Tri-State. One of the injections was administered by Nurse Anesthetist Tillman. Claimant testified Nurse Anesthetist Tillman told her she was being referred by Tri-State to the University of Nebraska Medical Center for a second opinion regarding further treatment.

Claimant was scheduled on October 1, 2019 for a second IME with Dr. McPherson. (Ex. B) Claimant testified at hearing she underwent the second IME with Dr. McPherson on October 1, 2019. She said Dr. McPherson spent approximately 10 to 15 minutes with her at both IMEs.

Claimant testified she has continued pain in her right shoulder. She said she is unable to lift her right arm above her head. Claimant said she has little strength in her right arm and shoulder because of her injury. She said that because of her limitations with her right shoulder, she is limited in her ability to perform her job. Claimant testified she wants to be seen at the University of Nebraska Medical Center as referred by her authorized treating provider.

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6) (e).

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

For purposes of this section, the 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. v. Reynolds, 562 N.W.2d at 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.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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, 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 their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

Tri-State is authorized to treat claimant. Nurse Anesthetist Tillman, a provider at Tri-State, referred client to the Orthopedic Department at the University of Nebraska Medical Center. Defendants have not authorized that referral. Instead they set claimant up with a second IME with Dr. McPherson.

Defendants' counsel contends the second IME with Dr. McPherson was necessary to assess the referral by Tri-State. Defendants' counsel contends no determination for further care should be made until the second IME report is issued by Dr. McPherson. Defendants' counsel believes this report will be available sometime on or after October 10, 2019.

The referral by Tri-State to the University of Nebraska Medical Center was made over a month ago. Defendants have had ample opportunity to communicate with Nurse Anesthetist Tillman, or any other provider who has treated claimant at Tri-State, for further information regarding the referral. Defendants have not done that.


Defendants are interfering with the treatment recommendations of Nurse Anesthetist Tillman, an authorized provider. Defendants are not entitled to interfere with the recommendations of an authorized provider. Defendants care, in this case, is found to be unreasonable.

Claimant's petition for alternate medical care is granted. Defendants shall authorize claimant's referral to the Orthopedic Department at the University of Nebraska Medical Center.

ORDER

Claimant's petition for alternate medical care is granted. Defendants shall provide the referral to the University of Nebraska Medical Center as recommended by Nurse Anesthetist Tillman.

Signed and filed this 2nd day of October, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Ron Pohlman (via WCES)

Patrick Mack (via WCES)