BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONALD A. WESTLING,	:	
Claimant,	:	File Nos. 5019701/5019702
vs.	:	REMAND
HORMEL FOODS CORPORATION,	:	DECISION
Employer, Self-Insured, Defendant.	:	Head Note Nos.: 2701, 2905

This case returns to the Iowa Division of Workers' Compensation via a remand from the Iowa District Court in and for Polk County on April 10, 2014. For ease of understanding, this acting workers' compensation commissioner will trace the procedural history of the case.

The review-reopening case was heard in Des Moines, Iowa by a deputy workers' compensation commissioner on April 23, 2012. The case was deemed fully submitted on April 24, 2012. The presiding deputy issued the review-reopening decision on April 26, 2012. In the very brief three page review-reopening decision, the deputy ruled on one issue, the matter of alternate medical care pursuant to Iowa Code section 85.27. The deputy found:

> The claimant was employed by Hormel Foods Corporation on January 23, 1986; July 1, 1993; and January 18, 1996 when he suffered injuries to his right knee which arose out of and in the course of that employment.
>
> The defendants have offered and provided treatment. The latest relevant treatment provided was from Dr. Crane in Mason City, Iowa. The claimant has a relationship with Dr. Crane dating at least to the late 1980's.
>
> The claimant now seeks treatment from Dr. Alvine in Sioux Falls, South Dakota based on a belief that Dr. Alvine would provide better treatment. The claimant testified that even if Dr. Alvine recommended surgery which Dr. Crane is not at present, that he probably would not have the surgery.

(Review-reopening, page 2)

As a result of the deputy's findings, the deputy determined the application for alternate medical care should be denied. The deputy wrote:

> The medical treatment provided by the defendants was not shown to be ineffective. The claimant has the burden of proving that the care authorized by defendants has not been effective in treating his injury. There is also no breakdown in the patient-physician relationship between the claimant and Dr. Crane. The employer is permitted to choose the care provided and is doing so.

(Review-reopening, p. 3)

Claimant filed his notice of appeal to the workers' compensation commissioner on April 30, 2012. On April 9, 2013, the former workers' compensation commissioner affirmed and modified the proposed decision with additional comment. The then workers' compensation commissioner wrote in relevant portion:

> Claimant seeks alternate care from the authorized treating physician and surgeon selected by his former employer. That physician is Dr. Crane. Dr. Crane has provided significant treatment to claimant, as has another physician in his medical clinic. Dr. Crane has evaluated claimant and does not presently recommend surgery – suggesting claimant return in approximately two years for further evaluation. Claimant seeks care from an alternate surgeon. Dr. Crane is the authorized treating physician in this matter. As such, claimant is entitled to treatment with Dr. Crane as needed for treatment of his injured knee. There is no limitation on claimant's ability to seek reasonable and necessary medical treatment with Dr. Crane. Should such treatment be denied, claimant is urged to file a petition for alternate medical care as an expedited procedure so that such issues can be considered. Further, claimant has testified that he resides approximately five months each year in the state of Florida and in the past has been required to seek emergency medical treatment for his injured knee. Defendants have been shown to have not authorized a physician for treatment in the state of Florida. Claimant is entitled to such treatment, if needed in the future. While claimant's final appellate issue asserts that the deputy failed to require defendants to discharge their affirmative obligation without interference with care to furnish reasonable services and supplies to treat his work injuries and to offer treatment promptly and to be reasonably suited to treat his injuries without undue inconvenience to claimant, such assertion is incorrect. The proposed decision's finding is that defendants have discharged their affirmative medical care obligations through the authorization of care with Dr. Crane.

> That finding is affirmed, but is modified to order that defendants provide authorization for claimant's medical care needs during the periods of the year when he resides in the state of Florida.
>
> As noted, defendant's obligation to provide reasonable and necessary medical care treatment is an ongoing obligation. This appeal decision does not preclude claimant from filing an alternate medical care petition based upon future needs.

(Appeal, p. 3)

On April 29, 2013, claimant filed an application for a rehearing. Defendant filed a resistance on May 7, 2013. The former workers' compensation commissioner issued a rehearing decision on May 20, 2013. The application for rehearing was denied.

On May 21, 2013, claimant filed a petition for judicial review in the District Court of Iowa in and for Polk County. On January 14, 2014, the Honorable Judge Lawrence P. McLellan, District Court Judge for the Fifth Judicial District of Iowa, issued a ruling on the petition for judicial review. The ruling on the petition for judicial review stated in relevant portion:

> The commissioner's "findings of fact" are not extensive. One of the findings that the commissioner relied upon was Westling's response to his question about whether he would have surgery if Dr. Alvine recommended it. The commissioner state [sic] that Westling indicated he would not when in fact Westling stated "I don't know." Disregarding the misstated finding on Westling's willingness to undergo surgery, the only facts remaining are that Dr. Crane had treated Westling for a number of years and had been the provider who treated him most recently. It is unclear to the court how these findings of fact are relevant to the issues of whether the authorized care was (1) prompt, (2) reasonably suited to treat the injury, and (3) without undue inconvenience to the claimant.
>
> The medical complaints Westling had at the time he saw Dr. Crane were looseness and pain in the knee. The record indicates that Dr. Crane did not recommend any treatment or surgery at that time. Dr. Albright, the University of Iowa physician, reviewed Westling's medical records and agreed with Dr. Crane's assessment. Westling provided no testimony that the recommended treatment related to surgery was unreasonable for the injury other than to argue it was no treatment at all. While this evidence might be sufficient to support the commissioner's decision on the issue of whether surgery for the looseness in the knee was appropriate the commissioner does not set fort [sic] what facts he relied upon in reaching

the conclusion that Westling failed to meet his burden of proof under section 85.27 on this issue.

In addition, the commissioner did not address Westling's testimony that he was unhappy with how Dr. Crane had treated him on his last examination for his pain complaints. Dr. Crane noted the complaints of pain but made no recommendations for treatment for that pain. These factors are material to the issue of whether Westling's care was reasonably suited to treat his injury.

Upon review of the commissioner's decision, the court finds that the commissioner failed to set forth those facts which establish that Westling failed to meet his burden that the authorized care was ineffective or unreasonable with regard to the issue of surgery. In addition, there were no facts set forth indicating how Wetling [sic] failed to meet his burden that the treatment was ineffective or unreasonable with regard to his complaints of pain. The only findings of fact that he made do not appear to have any relation to the effectiveness or reasonableness of Dr. Crane's care.

The commissioner's decision is that Westling failed to meet his burden of proof but he failed to set forth the facts he relied upon in reaching that decision so the court cannot determine whether those facts are supported by substantial evidence in the record. Therefore, the court remands to the agency so the commissioner can set forth those facts he relied upon in concluding that Dr. Crane's treatment for Westling's complaints of looseness in the knee and pain were prompt, reasonably suited for treatment and without undue inconvenience for Westling. The court orders the commissioner's decision **REMANDED** for an order consistent with this ruling.

(Ruling on Petition for Judicial Review, pp. 7-8)

In the present case, claimant's personal medical provider, Jamie L. Hicks, ARNP, at the Milford Family Care Clinic examined claimant for several medical issues. One of the issues was claimant's work-related right knee pain. Nurse Practitioner Hicks referred claimant to a Dr. Alvine (first name unknown) at the Core Orthopedics Clinic in Sioux Falls, South Dakota. Defendant denied authorization for the care as Dr. Alvine was not an employer selected physician. (Defendant's Exhibit 4c, pp. 1-2) Claimant was dissatisfied with the care offered and expressed his dissatisfaction to defendant.

The authorized treating physician, Michael W. Crane, M.D., examined claimant on August 19, 2011 because of claimant's ongoing right total knee replacement. (Ex. 4a) For many years, Dr. Crane had been treating claimant. Dr. Crane indicated in his

clinical notes for August 19, 2011 that claimant reported: "[T]he knee hurts off and on. It feels like it will give out on occasion. It clicks and makes noise." (Ex. 4a, p. 1)

The authorized treating physician conducted a physical examination of claimant's right knee and reviewed x-rays that were taken on the same date. The doctor noted upon examination:

> EXTREMITIES: On examination of the knee he extends well to 0 degrees and flexes to 100-105 degrees. Medial and lateral instability is not a significant problem, but he doe [sic] have some anterior posterior instability. He also has a bit of effusion I believe. He has no evidence of redness to suggest and infectious type process. The right leg also shows signs of brawny edema. He has apparently had two blood clots on that side.
>
> ANCILLARY STUDIES
> His x-rays look pretty good, although there is some lucency about the medial aspect of the tibial component. This has not changed since 2006.
>
> . . . .
>
> IMPRESSION
> Slightly painful knee. By x-ray I would not suggest a revision at this point. With the lucency medial there is a potential it could fracture.
>
> RECOMMENDATIONS
> 1. With his previous complications I would suggest he wait until he has more trouble to consider revision.
> 2. He should be seen in about 2 years with an x-ray.

(Ex. 4a, p. 2)

The x-ray report was authored by Dr. Crane on August 24, 2011. The report indicated:

> COMPARISON
> Films from 2006.
>
> FINDINGS
> X-rays of the right knee show a total knee arthroplasty. It is a cemented implant with very small stems. There is x-ray evidence of a previous high tibial osteotomy. The medial side of the joint on the tibial side does have some lucent lines. Compared to previous x-rays there really is not significant change. The rest of the knee shows no significant issues.

IMPRESSION
Right total knee arthroplasty without evidence of current complications.

(Claimant's Ex., p. 161)

Defendant requested a second opinion regarding the reasonableness of Dr. Crane's medical treatment. Claimant's medical records with Dr. Crane were forwarded to John P. Albright, M.D., Professor of Orthopaedic Surgery at the University of Iowa. Dr. Albright was asked to review the records and to comment on the Dr. Crane's treatment of claimant. Dr. Albright opined in his report of April 16, 2012:

> To the nearest degree of medical certainty, the treatment recommendations and treatments undergone as a result of this work incident have been appropriate and necessary. Dr. Crane examined Mr. Westling on August 19, 2011. At that time Mr. Westling complained of "off and on" knee pain, reporting clicking and occasional giving out of the knee. Dr. Crane's note from that visit indicated Mr. Westling had some mild limitation with knee flexion, a bit of effusion, and some anterior-posterior instability. He had some signs of brawny edema as well. Dr. Crane remarks on some lucency about the medial aspect of the tibial component which was stable compared with previous films. There is also a history of DVT in the records and I have come to understand the [sic] Mr. Westling is on Coumadin. Given the stable appearance of the Xrays and "previous complications", Dr. Crane recommended Mr. Westling continue without any intervention and return to clinic in two years to follow up with repeat Xrays.
>
> After reviewing the provided medical records and Xrays, I agree with Dr. Crane's assessment and treatment plan. Mr. Westling's Xrays do show some evidence consistent with possible lucency at the medial aspect of the tibial component. This is unchanged from Xrays from the time of the arthroplasty. Loosening of knee arthroplasty components can be the result of some laxity, however, if this were the case, there would be a progression of lucency apparent on Xray, which is not the case with Mr. Westling. I agree that Mr. Westling should follow with regular Xrays done every year or two. I would not recommend any revision surgery without significant clinical or radiographic evidence indicating a further surgical intervention. In addition, medical co-morbidities necessitating chronic Coumadin therapy increase the risks associated with any surgical procedure, especially a revision surgery, and should be seriously considered in any surgical recommendation. This is another reason to avoid further surgery as long as possible.

> In summary, I do not see any clinical or radiographic indication for further surgical workup at this time, and I agree with Dr. Crane's assessment and plan.

(Ex. 4d, pp. 1-2)

Dr. Albright concurred with the recommendations of Dr. Crane. Dr. Albright did not see any clinical or radiographic indication for additional surgery at the time of Dr. Crane's assessment.

Claimant testified during the review-reopening proceeding. He testified the geographical distance of the two physicians from his home in Milford was not an issue for him. When questioned, the witness testified:

> THE COURT: While you're doing that, let me just ask you again, could you give me all the reasons that you want to go to Sioux Falls to see that doctor as opposed to the care that I understand is being offered to you in Mason City?
>
> THE WITNESS: He specializes in legs and knees.
>
> THE COURT: Okay.
>
> THE WITNESS: Where Dr. Crane doesn't. And I think he would give me better care.
>
> THE COURT: Any other reasons? Does distance play a factor?
>
> THE WITNESS: No, not really.
>
> THE COURT: Okay. The reason you want to go to Sioux Falls, then, is you believe the doctor there is more of a specialist in your particular condition?
>
> THE WITNESS: Yes.
>
> THE COURT: Okay. Any other reasons why you don't want to go to Mason City?
>
> THE WITNESS: I don't think I've had the specialist care from Dr. Crane that should be there.
>
> THE COURT: So if I'm understanding, you're telling me you're not totally satisfied with what's going on in Mason City?

THE WITNESS: No.

(Transcript, pp. 49-51)

Claimant testified during cross-examination:

Q. You know that Dr. Alvine is not a licensed physician in the state of Iowa?

A. Yes.

Q. He's licensed in Sioux Falls, South Dakota?

A. Yes.

Q. Out of state?

A. Yes.

Q. And have you looked into his background at all?

A. No.

Q. His fellowship was in spine surgery. Did you know that?

A. No.

(Tr., p. 62)

During cross-examination, one of the other defense witnesses inquired:

MR. HUBER:

. . . .

Q. When he did the osteotomy, did you understand he was a qualified surgeon to do that?

A. Yes.

. . . .

Q. Mr. Westling, let me ask you this. Has Dr. Crane ever sworn at you?

A. No.

Q. Has he ever called you a name?

A. No.

Q. Has he ever told you that he didn't believe something that you had told him?

A. No.

Q. Do you know whether Dr. Crane has ever treated you any differently than he's treated other patients?

A. I have no knowledge of that.

Q. You just don't like Dr. Crane, I take it?

A. I didn't say that either.

(Tr., pp. 75-76)

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 Decision October 16, 1975).

When the employee seeks alternate medical care, the claimant assumes the burden of proving the authorized care is unreasonable. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). To determine 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).

Reasonable care includes care necessary to diagnose the condition. 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).

The treatment offered to claimant was reasonable care. No one indicated the treatment offered was untimely. Dr. Crane, the long-standing authorized treating surgeon, examined claimant on August 19, 2011. The surgeon also authorized x-rays of the right knee. Dr. Crane compared the 2011 x-rays with the x-rays taken in 2006. There were very few differences in the right knee over the course of five years. Dr. Crane conducted a clinical examination of claimant's right knee. The knee was visually inspected; it was physically manipulated. The surgeon and claimant engaged in a meaningful dialogue, although claimant denied telling the surgeon the knee pain was "off and on."

Claimant recalled a slightly different conversation with the surgeon on August 19 2011:

> A. I told him it hurts like heck a lot of times, that I have problems all the time with it, sometimes every day.
>
> Q. And what kinds of problems do you have every day?
>
> A. It's the knee hurts, it just hurts terrible sometimes.
>
> Q. Okay. He writes further, "It feels like it will give out on occasion." Is that what you told him?
>
> A. Yes.

(Tr., p. 52)

There is the concurring opinion by Dr. Albright, the professor of orthopedics at the University of Iowa. He reviewed the records of Dr. Crane with respect to claimant. Dr. Albright opined Dr. Crane's treatment was appropriate and necessary, given claimant's prior medical history and condition.

Finally, there is the testimony of claimant. He indicated he did not know whether he would consider surgery even if Dr. Alvine would recommend additional surgical procedures, given claimant's preexisting DVT condition. Claimant testified Dr. Crane had not been rude to claimant, had not used abusive language with him. Nowhere in the record is there any indication Dr. Crane acted other than as a professional surgeon.

For all of the above reasons, it is the determination of this acting workers' compensation commissioner, claimant has failed to meet his burden of proof that he is entitled to alternate medical care pursuant to Iowa Code section 85.27.

However, it is important to reiterate defendant is required to authorize a physician to treat claimant's right leg when claimant is residing in the state of Florida. Claimant

Claimant resides there approximately five months out of each and every year. Claimant is entitled to such treatment, if needed in the future.

ORDER

IT IS THERFORE ORDERED that the Remand Decision from the Iowa District Court on the Petition for Judicial Review of January 14, 2014 is as follows:

Claimant has failed to meet his burden of proof that he is entitled to alternate medical care pursuant to Iowa Code section 85.27.

Defendant is reminded it is required to provide authorized medical care to claimant when he resides in Florida for the portion of the year that he lives there but defendant has the right to select the medical provider in Florida as provided by Iowa Code section 85.27.

Claimant shall pay the costs of the remand, if any.

Signed and filed this 11th day of February, 2015.

Michelle A. McGovern

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ACTING WORKERS' COMPENSATION
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