

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALVARO MARTINEZ,

Claimant,

vs.

BRUCE ENTERPRISES,

Employer,

and

INTEGRITY INSURANCE,

Insurance Carrier,
Defendants.

FILED

MAY 13 2019

WORKERS' COMPENSATION

File No. 5068050

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Alvaro Martinez. Claimant appeared personally and through his attorney, Andrew Bribiesco. Defendants appeared through their attorney, Coreen Sweeney.

The alternate medical care claim came on for hearing on May 10, 2019. The proceedings were digitally recorded. Said recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015, Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. As such, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 1-3, which include a total of 10 pages. The record also contains defendants' exhibits A-D, which contain 10 pages. All exhibits were received without objection. Claimant testified on his own behalf. He did not call any additional witnesses. Defendants called no witnesses. The evidentiary record closed at the conclusion of the alternate medical care hearing.

In filing his petition for alternate medical care, claimant seeks re-evaluation for possible consideration of surgical intervention on the right lower extremity, as well as further evaluation of his alleged low back condition, which he claims is secondary to an altered gait. At hearing, defendants disputed liability for the low back condition. As

such, this alternate medical care decision will only address the right lower extremity condition.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of a third opinion by an orthopedic specialist for further surgical evaluation.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Claimant, Alvaro Martinez, sustained a work-related injury to his right lower extremity on June 22, 2018. Initially, claimant presented to Dr. Frederick on July 2, 2018. Dr. Frederick treated claimant for pain in his right thigh, right calf, and right ankle. The injuries were determined to be work-related. Dr. Frederick ordered an MRI and placed claimant on work restrictions. The July 10, 2018, MRI revealed a mild rectus femoris strain. (See Exhibit D, page 1).

Defendants subsequently authorized treatment of claimant's right lower extremity complaints with Suleman Hussain, M.D. Dr. Hussain reviewed the July 2018 MRI report and confirmed the rectus femoris strain diagnosis. Dr. Hussain opined claimant likely sustained a tear. Recommended treatment included conservative treatment of work restrictions, physical therapy, injections, and diagnostic imaging. (See Ex. 2, p. 1).

Claimant reported steady improvement with physical therapy through September 2018. However, on October 29, 2018, Claimant reported worsening symptoms to Dr. Hussain. Dr. Hussain provided an injection and ordered work conditioning for one month. Dr. Hussain ordered a second MRI on November 16, 2018. (See Ex. 2, pp. 1-2).

The December 5, 2018, MRI report revealed small partial tears of both the superior and inferior rectus femoris muscle tendon junctions. (Ex. 1, p. 1).

On December 21, 2018, Dr. Hussain analyzed the MRI and diagnosed claimant with focal myositis of the rectus femoris. Dr. Hussain opined claimant's condition was likely a rheumatologic condition versus mechanical issue. Dr. Hussain opined the claimant's condition would not be considered work-related. (Ex. A, pp. 1-2).

On January 22, 2019, at the referral of his attorney, claimant presented for an independent medical examination with Sunil Bansal, M.D. Claimant complained of continued pain in his right thigh and calf. Claimant also complained of low back pain, with radiating pain into the right foot. Claimant provided he is currently able to stand or walk for roughly 30 minutes before needing to change positions. (Ex. 2, pp. 1-7).

Dr. Bansal conducted a thorough physical examination. (Claimant's testimony). Dr. Bansal summarized claimant's medical care to date. (Ex. 2, pp. 2-3). Dr. Bansal did not review the December 2018 MRI films; rather, he only reviewed the radiology report from Marcus Cabay, M.D. Dr. Bansal opined claimant sustained a right mid rectus femoris muscle tear from landing on his right leg on June 22, 2018. He opined claimant had developed considerable right upper leg atrophy with continued tearing as noted in the December 5, 2018, MRI. Dr. Bansal disagreed with Dr. Hussain's diagnosis of myositis; noting no radiologist noted findings indicative of myositis on either MRI report. Dr. Bansal opined claimant is at a high risk for complete rupture of his rectus femoris muscle and he recommended re-evaluation for possible consideration of surgical intervention. (Ex. 2, pp. 1-7).

In response to Dr. Bansal's recommendations and claimant's request for a second opinion, defendants scheduled claimant for an appointment with Matthew Bollier, M.D. of the University of Iowa Hospitals & Clinics (UIHC). Claimant presented for said appointment on March 13, 2019. Claimant reported severe pain in his right hip and thigh, as well as weakness in the right lower extremity. Dr. Bollier diagnosed claimant with a mild rectus femoris muscle strain, no tear. Dr. Bollier opined claimant's weakness and pain is more than he would expect with this type of injury. Despite Dr. Cabay reporting partial tears in the rectus femoris myotendinous junctions on the December 2018 MRI report, Dr. Bollier opined he could not find the same. Dr. Bollier agreed with Dr. Bansal that claimant does not have myositis. (Ex. C).

On April 11, 2019, defendants' counsel authored a letter to claimant's counsel. Defendants indicated Dr. Bansal's opinion and further treatment recommendations are at odds with the opinions of claimant's treating physicians and the second opinion of Dr. Bollier. As such, defendants declined claimant's request for a third opinion on further treatment. (Ex. D).

REASONING AND CONCLUSIONS OF LAW

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 October 16, 1975).

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); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

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).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

It is undisputed claimant continues to report right lower extremity symptoms and desires a third opinion evaluation. In hopes of receiving such an evaluation, the claimant took appropriate steps in obtaining evidentiary support for a request for a third opinion by producing an independent report from Dr. Bansal. Upon receipt of Dr. Bansal's report and a request for a second opinion, defendants acted promptly and diligently in arranging a second opinion evaluation with Dr. Bollier.

Dr. Bollier performed the second opinion evaluation of claimant on March 13, 2019. Upon physical examination, Dr. Bollier noted there were no masses on claimant's right thigh. Dr. Bollier reviewed claimant's MRI films from July 2018 and December 2018. Dr. Bollier did not find any tears on the December 2018 MRI film. Dr. Bollier disagreed with Dr. Bansal's findings of a muscle tear and a mass formation. Dr. Bansal's opinions are at odds with the opinions of two orthopedic surgeons in the record.

Claimant's treating physician reviewed the December 2018 MRI and opined it revealed no significant structural deficiency. The same provider opined claimant's current condition is not work-related. Dr. Bollier, an orthopedic specialist, opined the work injury caused a mild rectus femoris muscle strain and no tear. He did not appreciate small tears on the December 2018 MRI. While it is concerning two physicians can appreciate small tears on an MRI report, and a third can fail to see the same, the fact remains Dr. Bollier is a highly-qualified physician. I will not interfere with his medical judgment by interjecting my own.

It cannot be said defendants have acted unreasonably in offering and procuring medical treatment for claimant. Despite the lack of a legal obligation to do so, defendants authorized and provided a second opinion appointment upon request. While Drs. Hussain and Bollier do not agree with respect to a specific diagnosis, neither

physician believes further treatment would be causally related or warranted at this time. Claimant's application for alternate medical care is denied at this time.

I certainly understand claimant's desire for a third opinion. His request for a third opinion is reasonable; however, desirability of a certain course of action is not the legal standard utilized in alternate medical care proceedings. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). I conclude that claimant has failed to carry his burden of proof that the medical care offered by defendants at this time is unreasonable.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is DENIED.

Signed and filed this 13th day of May, 2019.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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