

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROGER L. LIDDICK,

Claimant,

vs.

CAMPING WORLD,

Employer,

and

ACE AMERICAN INS. CO.,

Insurance Carrier,
Defendants.

FILED

JUL 08 2016

WORKERS COMPENSATION

File No. 5052583

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. On September 25, 2014, the claimant, Roger Liddick ("Liddick") sustained a work-related injury to his right upper extremity, shoulder, and neck, while working for the defendant, Camping World ("Camping World"). On June 27, 2016, Liddick filed a petition for alternate medical care and Exhibits 1 through 5. Liddick requested an in-person hearing. On June 27, 2016, the defendants Camping World and ACE American Insurance Company filed an answer and Exhibits A through E.

On June 28, 2016, this division filed a notice of telephone hearing, scheduling a hearing for July 8, 2016, at 10:30 a.m. A copy of the notice was mailed to the parties. Prior to the hearing, Liddick also submitted a brief.

A hearing was held on July 8, 2016 at 10:30 a.m. in Des Moines. Attorney Richard Maher appeared with his client, Liddick. Attorney Abigail Wenninghoff appeared by telephone conference call on behalf of the defendants. Liddick testified. Exhibits 1 through 5 and A through E were admitted. I took official notice of the pleadings and brief filed by Liddick. 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

On September 25, 2014, Liddick was injured while working for Camping World. (Liddick Testimony) Liddick was responsible for working on and repairing the interiors and exteriors of campers. (Liddick Testimony) At the time of his injury, Liddick was installing a toe bracket on a vehicle with a drill. (Liddick Testimony) The drill bit became caught in the frame, twisting the drill and Liddick's arm. (Liddick Testimony) Liddick's right shoulder hurt and the pain went down his arm and into his fingers. (Liddick Testimony) Liddick reported the injury to his employer and he was taken to Mercy Hospital. (Liddick Testimony) At the hospital x-rays were taken of Liddick's wrist and shoulder. (Liddick Testimony) The hospital staff provided Liddick with a sling and he was placed on light duty. (Liddick Testimony)

Liddick received follow-up care through occupational health and through his primary care physician. (Liddick Testimony) Defendants arranged care for Liddick through Roy Abraham, M.D., with Miller Orthopedic Specialists. (Liddick Testimony; Exhibit 2, page 1) During his first appointment with Dr. Abraham on October 3, 2014, Liddick complained of a "lack of sensation from the elbow down on the right arm, inability to move the right arm." (Ex. 2, p. 1) He also complained of "pain when moving his right shoulder and paresthesia from the elbow down." (Ex. 2, p. 1) Dr. Abraham recommended a nerve conduction test for the right upper extremity and ordered "[n]o work." (Ex. 2, p. 1) Liddick did not attend the nerve conduction test. (Ex. 2, p. 2)

Liddick attended follow-up appointment with Dr. Abraham on October 31, 2014, and reported he wanted to return to work. (Ex. 2, p. 1) Dr. Abraham released Liddick to return to work. (Ex. 2, p. 2)

Liddick returned to Dr. Abraham on December 10, 2014, and reported he was continuing to have numbness in his arm. (Ex. 2, p. 2) Liddick told Dr. Abraham that since he had returned to work his "shoulder feels like it is tearing and that his hand is numb." (Ex. 2, p. 2) Dr. Abraham again recommended a nerve conduction test. (Ex. 2, p. 2)

Liddick was referred to Caliste Hsu, M.D., a hand specialist with Miller Orthopedic Specialists on December 23, 2014. (Ex. 2, p. 2) Dr. Hsu noted, "EMG performed and demonstrates an abnormal study with electrophysiologic evidence to suggest predominantly a demyelinating greater than axonal sensory greater than motor polyneuropathy affecting the right arm, which could represent a brachial plexopathy." (Ex. 2, p. 3) Dr. Hsu listed an impression of right posttraumatic brachial plexus injury and right extensor tendinitis, one through six. (Ex. 2, p. 3) Dr. Hsu recommended magnetic resonance imaging of the right shoulder and placed Liddick on pain

medication for his nerve injury. (Ex. 2, p. 3) Dr. Hsu restricted Liddick from using his right hand. (Ex. 2, p. 3)

Liddick next saw Huy Trihn, M.D. with Miller Orthopedic Specialists on December 31, 2014. (Ex. 2, p. 3) Dr. Trihn again recommended magnetic resonance imaging of Liddick's right shoulder with arthrogram, and magnetic resonance imaging of his cervical spine with a cervical sympathetic block. (Ex. 2, p. 4) Dr. Trihn restricted Liddick from using his right upper extremity. (Ex. 2, p. 4)

Dr. Trihn reviewed the imaging in February 2015, and found:

The MRI of the right shoulder shows only small anterior/inferior labral tear which I do not think is that significant to the point that it would explain his current symptoms.

MRI of the cervical spine does reveal a broad based central disc protrusion at C6-7 which is pressing against the C7 nerve root. I do not think he has any significant stenosis. Cord signal is normal.

(Ex. 2, p. 4) Dr. Trihn recommended proceeding with a cervical epidural steroid injection, and imposed restrictions of "[v]ery light right upper extremity use. No lifting over 10 lbs. No overhead work." (Ex. 2, p. 4) Liddick's position with Camping World requires the use of his arms and frequently involves overhead work. (Liddick Testimony) Dr. Trihn later recommended a second opinion with a neurosurgeon. (Ex. 2, p. 5)

Liddick was referred to J.B. Gill, M.D. with Nebraska Spine Center LLP. (Ex. 3, p. 1) Dr. Gill performed an anterior cervical discectomy and fusion C6-7 on December 5, 2015. (Ex. 3, p. 1) Three months following the surgery Dr. Gill documented:

He reports improved pre-op neck pain that is now only in the morning with stiffness and then fades. His right arm pain remains stable from pre-op with pain in right posterior upper arm and numbness in ulnar forearm into 3rd-5th digits. He also has stable right shoulder pain and difficulty with shoulder ROM. He denies weakness but has difficulty with motion due to pain.

(Ex. 3, p. 1) Dr. Gill found that Liddick was at maximum medical improvement for his neck on March 4, 2016, but noted "patient still remains symptomatic in his right shoulder." (Ex. 3, p. 2) Dr. Gill recommended a second opinion from Charles Rosipal, M.D. (Ex. 3, p. 2)

Defendants refused to authorize an appointment with Dr. Rosipal and referred Liddick to Jonathan Buzzell, M.D. (Ex. A) Liddick filed a petition for alternate medical care. The deputy workers' compensation commissioner issued a decision on March 25,

2016, granting the petition and finding "the failure to authorize Dr. Rosipal is not reasonable medical care." (Ex. A, p. 4)

Liddick testified Dr. Rosipal never examined him and refused to treat him. (Liddick Testimony) Liddick requested a referral from Dr. Gill. (Ex. B) Dr. Gill recommended "[a]t this time other physicians include a repeat evaluation by Dr. Buzzell, the patient may also see Dr. Hutton over at Ortho West. Other options include Dr. Samuel Dubrow over at CHI/Creighton orthopedics or Dr. Matt Dilisio affiliated with the same CHI/Creighton Clinic." (Ex. B) Defendants referred Liddick to Dr. Buzzell. (Ex. 4)

Dr. Buzzell found:

Again, I would recommend against any kind of surgery on Mr. Liddick's right shoulder. His MRI arthrogram noted from last year was again reviewed, which demonstrated intact rotator cuff, glenoid labrum, and biceps. Overall a sound shoulder. His symptoms on exam are not at all consistent with what we typically see for rotator cuff, labrum, arthritis, impingement, or instability. We placed him at maximum medical improvement for his right shoulder with no restrictions for the shoulder, which is what Mr. Liddick says he would like. He said he would like to be able to go back to work. I encouraged him to call Dr. Gill to relieve restrictions for him, assuming all things are normal [sic] routine healing of his ACDF. He can be discharged from my clinic. We will not schedule him for return.

(Ex. 4)

Liddick continued to experience symptoms in his right upper extremity and returned to Dr. Abraham. (Ex. 5) Dr. Abraham listed an impression of mild tendinitis of the shoulder and administered an injection to Liddick's shoulder. (Ex. 5) Dr. Abraham found Liddick had no impairment with his shoulder. (Ex. 5)

Liddick would like to be evaluated and treated by Matthew Dilisio, M.D., an orthopedic surgeon specializing in shoulder and elbow surgery. Dr. Gill recommended Liddick receive treatment from Dr. Dilisio. Defendants have refused to authorize the care, and alleged at hearing that Liddick is "doctor shopping."

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 employer’s obligation under the statute turns on the question of reasonable necessity, not desirability.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

I find the defendants have acted unreasonably in this case by failing to authorize a consult with Dr. Dilisio. Liddick continues to complain of pain and numbness in his right upper extremity. (Liddick Testimony) He has complained about these symptoms since October 3, 2014. (Ex. 2, p. 1) Three months after his anterior cervical discectomy and fusion C6-7, Liddick reported his neck had improved, but he continued to have pain and numbness in his right upper extremity and loss of range of motion. (Ex. 3, p. 1)

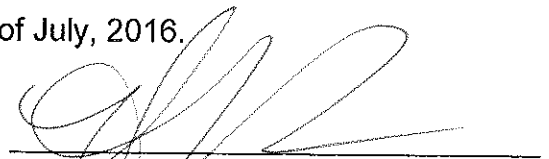
The authorized treating physician, Dr. Gill, recommended Liddick see Dr. Dilisio. For many years this agency has held that reasonable care includes care necessary to diagnose the condition, and that a defendant may not interfere with the medical judgment of its own treating physician. Berns v. CRST, File No. 5034602 (Alt. Care Dec. Aug. 27, 2012) (citing Cahill v. S & H Fabricating & Engineering, File No. 1138063, (Alt Care May 30, 1997); Hawxby v. Hallett Materials, File No. 1112821 (Alt Care Feb. 20, 1996); Leitzen v. Collis, Inc., File No. 1084677 (Alt Care Sept. 9, 1996)).

Defendants have not proposed any alternate care. The care offered by the defendants has not been effective in alleviating Liddick’s symptoms. Dr. Rosipal refused to treat Liddick and Drs. Buzzell and Abraham do not have any treatment to offer him. Liddick continues to complain of pain and numbness in his right upper extremity. (Liddick Testimony). The evidence presented at hearing supports the care offered by the defendants is unreasonable, ineffective, and inferior. See Pirelli-Armstrong Tire Co., 562 N.W.2d at 437 (finding the care authorized by the employer was ineffective, inferior and less extensive than the care requested because the claimant’s pain had increased and his leg had atrophied during the year he had been treated by the company-approved physician). Liddick’s petition for alternate care should be granted.

ORDER

Claimant's petition for alternate care is GRANTED. Defendants are liable for the treatment and associated costs.

Signed and filed this 8th day of July, 2016.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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