BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

OSCAR ESPINAL, Claimant, vs. THE HON CO., Employer, Self-Insured, Defendant.	:	File No. 1656011.02 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

STATEMENT OF THE CASE

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, Oscar Espinal. Claimant appeared through his attorney, Michelle Schneiderheinze. Defendant appeared through its attorney, Edward Rose.

The alternate medical care claim came on for hearing on October 26, 2020. The proceedings were digitally recorded. That 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. Therefore, 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 exhibit 1, which is attached to the original petition, and defendant's exhibits A and B. No witnesses were called. Counsel offered oral arguments to support their positions.

It should be noted that claimant's original petition listed the bilateral shoulders and right hand as the affected/disabled body parts. Defendant denied liability for the right shoulder and upper extremity, and admitted liability for the left shoulder. As such, at hearing, claimant's counsel clarified that the alternate care sought is limited to the accepted left shoulder.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care to treat his ongoing left shoulder complaints.

FINDINGS OF FACT

The undersigned having considered the parties' arguments and all of the evidence in the record finds:

Claimant sustained an accepted injury to his left shoulder while working for the defendant employer on October 31, 2018. He eventually had surgery consisting of left shoulder arthroscopic rotator cuff repair, bursectomy, and acromioplasty. (Defendant's Exhibit B-1) Following surgery, claimant continued to treat with Suleman Hussain, M.D., at ORA Orthopedics. Dr. Hussain is the authorized treating physician. Claimant attended physical therapy and had injections in the left shoulder. (Ex. B) He had a repeat MRI of the left shoulder, which resulted in an arthroscopic revision surgery. (Ex. B-5) He had additional physical therapy following the second surgery, and had a functional capacity evaluation (FCE) on February 5, 2020. (Ex. B-6) Based on the valid FCE, Dr. Hussain recommended permanent restrictions for the left upper extremity of occasional lifting floor to knuckle 20-pounds; frequent lifting floor to knuckle up to 17.5-pounds; constant lifting floor to knuckle up to 7-pounds; no use of ladders; no restrictions with respect to computer based desk work. (Ex. B-6) Dr. Hussain placed claimant at maximum medical improvement on February 14, 2020.

Claimant had an independent medical evaluation (IME) with Richard L. Kreiter, M.D., on June 30, 2020. (Claimant's Exhibit 1) Following his review of the records and examination, Dr. Kreiter's impression was chronic pain in the left shoulder with adhesive capsulitis, post cuff repairs, biceps tenodesis with continued bicipital tendonitis and elbow weakness. He recommended a second evaluation take place promptly. Dr. Kreiter suggested claimant see someone at the University of Iowa shoulder/upper extremity clinic for his ongoing symptoms of pain and decreased range of motion. (Ex. 1)

There is no evidence in the record as to when claimant first requested additional care from defendant following the IME. However, on October 21, 2020, defendant's attorney wrote to claimant's attorney and advised that claimant is authorized to return to Dr. Hussain at ORA. (Ex. A-1)

REASONING AND CONCLUSIONS OF LAW

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.

Defendant's "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation turns on the question of reasonable necessity, not desirability." Id.

Similarly, 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. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

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 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, 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 June 17, 1986). Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

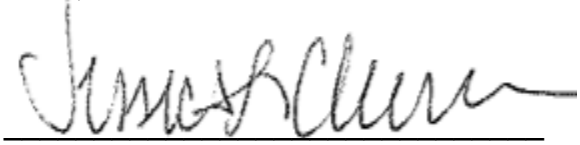
In this case, claimant has not proven that the care offered by defendant is unreasonable. The evidentiary record establishes that claimant continues to have symptoms. However, defendant has authorized claimant to return to Dr. Hussain, the authorized treating physician. Defendant is providing reasonable care. Therefore, I conclude claimant has failed to establish his claim for alternate medical care on the record presented.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is denied, as defendant has authorized continued treatment with Dr. Hussain.

Signed and filed this __26th__ day of October, 2020.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Michelle Schneiderheinze (via WCES)

Edward Rose (via WCES)