BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN DAU,

Claimant,

vs.

FARMLAND FOODS, INC.,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,
Defendants.

File No. 5060516

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, John Dau.

The alternate medical care claim came on for hearing on January 2, 2018. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-4; defendants' exhibits A-E. Claimant alleges a date of injury of March 9, 2017. During the course of hearing, defendants admitted the occurrence of a work injury on March 9, 2017, and liability for the conditions sought to be treated by this proceeding. Counsel offered oral arguments to support their positions; no witnesses testified.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, John Dau, sustained an injury to his left middle finger arising out of and in the course of his employment with Farmland Foods, Inc. on March 9, 2017. The relief claimant is seeking through his alternate medical care petition is, a graft to attempt to repair damaged nailbed and minimize distal fingertip sensitivity as recommended by

Timothy Miles Schurman, M.D., who conducted an Independent Medical Examination (IME). (Alt. Care Pet.)

Claimant sustained a complete finger nail avulsion injury to his middle finger on his left hand. Since the time of the injury, he has received authorized medical care from family practice physician John Lothrop, M.D., and from orthopedic surgeon, Thomas Dulaney, M.D., at DMOS. Neither physician has recommended any type of surgical care.

Dr. Dulaney last saw the claimant on September 8, 2017. At that time, Mr. Dau's main complaint was that his finger looked funny and he had an abnormal sensation where the injury occurred. He had no other complaints. Dr. Dulaney felt that no surgical intervention was necessary for his finger. He noted that Mr. Dau felt capable of doing all regular activities and work with his finger. Dr. Dulaney felt that Mr. Dau had reached Maximum Medical Improvement. He planned to see Mr. Dau back on an as-needed basis. (Ex. 3; Ex. B, p. 5)

At the request of his attorney, claimant underwent an IME with Dr. Schurman, a plastic surgeon at the Iowa Clinic; this was done in late October of 2017. Mr. Dau reported continued pain in his fingertip since the time he was released by Dr. Dulaney. Dr. Schurman opined that Mr. Dau received inadequate care for his injury. He noted that he should have been seen by a physician within the first day of the injury; instead he was seen by a member of the employer's nursing staff and sent back to the production line. Dr. Schurman felt that Mr. Dau's fracture was fully healed. He noted that he had a fairly significant nail bed deformity which "may be amenable to treatment." (Ex. 2, p. 3) He felt that a surgeon would most likely have to do a full-thickness nail bed graft from his great toe and even with that he would still have some residual deformity. Dr. Schurman did not feel that Mr. Dau had reached MMI because there is still treatment for his current deformity. The doctor noted that unfortunately, there was no guarantee that the reconstruction of the nail bed was going to change the painful nature of the digit at this time. Dr. Schurman also noted that Mr. Dau's finger was still tender and felt the use of a splint for protection for the tip of the finger was warranted. (Ex. 2)

On December 20, 2017, Dr. Dulaney authored a missive to defense counsel. Dr. Dulaney stated that, based on his last exam, he was very doubtful that any type of further reconstructive procedure was likely to greatly improve Mr. Dau's finger. Dr. Dulaney stated that he is not a hand specialist but would recommend getting several opinions from hand surgeons before considering such a large reconstructive procedure on a finger that appears to be very functional clinically. (Ex. C, p. 8)

Claimant is requesting that defendants authorize the graft recommended by Dr. Schurman. After the petition for alternate medical care was filed, defendants offered a consultation with Shane Cook, M.D. at DMOS; this appointment is scheduled for January 4, 2018. Claimant argues that this is inferior treatment because although Dr. Cook is a hand surgeon, he is not board certified. Additionally, claimant argues that Dr. Cook may not be completely objective because he is Dr. Schurman's business

partner. Claimant also argues that defendants are not offering treatment; merely a consultation.

I find that defendants are offering reasonable treatment. Defendants have the right to control the treatment in a workers' compensation case. Defendants have not abandoned care. The authorized treating orthopaedic surgeon has recommended that claimant see another hand specialist before consideration is given to such a large reconstructive procedure on a finger that appears to be very functional clinically. Defendants have scheduled an appointment for the claimant to see a hand specialist on January 4, 2018.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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., 562 N.W.2d at 433, 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.

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).

Based on the above findings of fact, I conclude that defendants are offering reasonable care. While the claimant may desire to immediately have surgery with Dr. Schurman, it is not unreasonable for defendants to send Mr. Dau to another hand specialist as recommended by the authorized treating physician, Dr. Dulaney.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 2nd day of January, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Jennifer M. Zupp
Attorney at Law
1919 Fourth Ave. South, Ste. 2
Denison, IA 51442
jennifer@zuppandzupp.com

Michael J. Miller
Attorney at Law
505 - 5th Ave., Ste. 729
Des Moines, IA 50309
mmiller@pattersonfirm.com

EQP/sam