

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

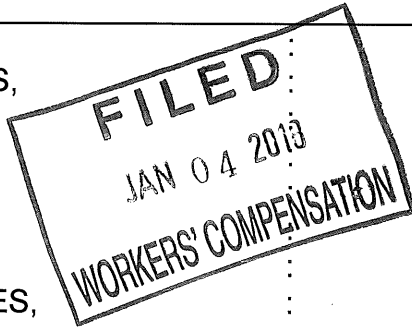
CLIFFORD WATKINS,

Claimant,

vs.

CITY OF DES MOINES,

Employer,
Self-Insured,
Defendant.



File No. 5059257

ALTERNATE MEDICAL

CARE DECISION

Head Note: 2701

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Clifford Watkins alleges he sustained a work injury to his right shoulder while working for the City of Des Moines ("the City"). On December 21, 2017, Watkins filed an application for alternate medical care requesting a right shoulder arthroscopy, subacromial decompression, distal clavicle excision, and possible rotator cuff repair recommended by authorized treating physician, Wesley Smidt, M.D.

On December 21, 2017, the Division of Workers' Compensation served a notice of telephone hearing, scheduling a hearing for January 4, 2018, at 10:30 a.m. A copy of the notice was served on Watkins's counsel, and on the City's counsel. The City did not file an appearance or answer before the hearing.

A telephone hearing was held on January 4, 2018, at 10:30 a.m. Attorney Christopher Spaulding appeared with his client, Watkins. No one appeared on behalf of the City. I waited five minutes before proceeding with the hearing to accommodate a late call or electronic mail message from the City. I did not receive a call or an electronic mail message from the City. Watkins testified and Exhibits 1 through 3 were admitted into the record. 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

Watkins has worked for the City for twenty-seven years. (Watkins Testimony) Watkins testified he has sustained a number of work-related injuries over the course of the past six to seven years. (Watkins Testimony) Watkins reported Wesley Smidt, M.D., has been an authorized treating physician for his injuries. (Watkins Testimony)

Watkins testified he injured his right shoulder while working for the City. (Watkins Testimony) Watkins received treatment from Dr. Smidt. (Watkins Testimony) Dr. Smidt issued an opinion on September 14, 2017, agreeing he believed the work performed by Watkins for the City “represents a substantial causal, aggravating, or accelerating factor in Mr. Watkins right shoulder condition and need for surgery.” (Exhibit 1) Dr. Smidt recommended Watkins undergo a right shoulder arthroscopy, subacromial decompression, distal clavicle excision, and possible rotator cuff repair. (Ex. 1) Watkins requested the City authorize the surgery. (Watkins Testimony) The City refused to authorize the surgery. (Watkins Testimony)

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) (2017). 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 determination of whether care is reasonable is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Watkins has requested shoulder surgery recommended by Dr. Smidt, the authorized treating physician. 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 Aug. 27, 2012) (citing Cahill v. S & H Fabricating & Eng'r, 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)). The City is interfering with the medical judgment of Dr. Smidt, the authorized treating physician.

To date the City has refused to authorize the right shoulder surgery recommended by Dr. Smidt. Based on the evidence presented at hearing I find the City has acted unreasonably by refusing to authorize the recommended surgery. Watkins's application for alternate care should be granted.

ORDER

THEREFORE IT IS ORDERED:

Watkins's application for alternate care is granted. The City is responsible for the cost of the surgery recommended by Dr. Smidt on September 14, 2017.

Signed and filed this 4th day of January, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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