

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CONNIE MORGAN,

Claimant,

vs.

CONTINENTAL DELI FOODS,

Employer,
Self-Insured,
Defendant.

:
:
:
:
:
:
:
:
:
:
:
:
:

File No. 5006228

ARBITRATION

DECISION

HEAD NOTE NO: 2700

STATEMENT OF THE CASE

Connie Morgan, claimant, filed a petition in arbitration seeking workers' compensation benefits as the result of an injury she sustained with Continental Deli Foods, self-insured defendant-employer, which arose out of and in the course of her employment. The case was heard and fully submitted in Storm Lake, Iowa on June 17, 2004. The evidence in the case consists of the testimony of claimant as well as claimant's exhibits 1 through 5 and defendant's exhibits A and B.

The sole issue presented for resolution in the case is whether defendant will be given the ability to direct claimant's medical care.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony of the witness and considered the evidence in the record, finds that:

Connie Morgan, claimant, filed a petition in this case seeking workers' compensation benefits as the result of an injury she sustained on March 26, 2002 while in the employ of Continental Deli Foods, defendant-employer. Defendant initially sent claimant for medical treatment by a physician assistant for pain that claimant was having on the right side of her neck and shoulder. The physician assistant came to the conclusion that much of claimant's problem was related to her breast size. As a result, defendant, in a letter to claimant dated September 3, 2002, set forth that claimant's continued right shoulder pain was due to a personal condition and that the employer would not pay for any additional medical care. (Exhibit 1 and Exhibit 3, page 3)

Claimant's family physician then referred claimant for care by William Samuelson, M.D., who is an orthopedic surgeon. Dr. Samuelson saw claimant on

October 8, 2002 and set forth an MRI reflected claimant had a herniated disk at the C5-6 level. He found claimant had numbness and tingling in three fingers of her left hand and had positive Tinel's and Phalen's signs. As a result, Dr. Samuelson opined claimant had left carpal tunnel syndrome and left rotator cuff tendonitis. (Ex. 4, p. 1) Dr. Samuelson performed a left carpal tunnel release on November 8, 2002. (Ex. 4, p. 4)

On March 7, 2003, Dr. Samuelson performed a left shoulder subacromial decompression and offered as a postoperative diagnosis claimant had left shoulder pain with impingement syndrome. (Ex. 4, p. 7)

Claimant testified at hearing that her left carpal tunnel no longer bothers her and that she has intermittent soreness in her left shoulder but that she can use it.

On September 25, 2003, Dr. Samuelson noted that claimant was seen having a lot of right arm pain and his physical examination led him to believe claimant had impingement signs in the right shoulder. He injected claimant's right shoulder on that date. (Ex. 4, pp. 11 through 12)

Claimant underwent an independent medical examination, at the request of defendant, by Jack McCarthy, M.D. in the March 31, 2004. Dr. McCarthy opined claimant's work activities for the employer may have significantly caused and/or contributed to the development of claimant's shoulder impingement and carpal tunnel syndrome. (Ex. A, p. 5)

Claimant and defendant entered into an agreement for settlement as it related to the March 26, 2002 injury, whereby defendant accepted liability on the claim and workers' compensation benefits were paid based on the disability that has occurred from that injury. Defendant now desires to authorize continued medical treatment with an orthopedic specialist, Thomas Chopp, M.D., located in Dakota Dunes, South Dakota. (Ex. B)

Claimant testified she has been satisfied with Dr. Samuelson's care and has a good patient/doctor relationship with him. She does not want to start over from scratch with another physician, as Dr. Samuelson is aware of her condition. Claimant continues to be seen by Dr. Samuelson for her right shoulder complaints.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 85.27 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 now contend that as it has accepted liability for the work injury, that defendant should have the ability to direct claimant's medical care. However, claimant maintains that based on defendant's initial denial of the claim, this led to claimant seeking out her own medical care, which resulted in her being treated by Dr. Samuelson. Claimant continues to be seen by Dr. Samuelson, who has performed surgeries on claimant for her injury, and claimant desires to continue that relationship as she is satisfied with Dr. Samuelson's care, has a good patient/doctor relationship with him and does not want to start over again with another physician.

The case of West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999) is instructive as to how this case should be decided. The court in that case set forth that an employer is obligated to furnish reasonable medical care to an employee and has the right to choose such care, however, such treatment must be prompt and reasonably suited to treat the injury without undue inconvenience to the claimant. In this case, claimant argues that prompt medical treatment was not offered by defendant and that defendant's recent acceptance of liability should not be sufficient to overcome the fact that such treatment was not offered earlier. Additionally, based on the relationship claimant has with Dr. Samuelson, it would be not in claimant's best interest to be switched to another physician at this late date. It is concluded that defendant's request for transfer of claimant's medical care to Dr. Chopp will not be granted and that claimant will be able to continue her treatment with Dr. Samuelson. Defendant will be responsible to pay for such medical treatment that is causally connected to the accepted work injury.

ORDER

THEREFORE, IT IS ORDERED:

That claimant will retain William Samuelson, M.D., as her authorized treating physician for her work injury and defendant shall be responsible for the payment of such treatment, which is causally connected to the work injury.

That defendant shall pay the costs of this action pursuant to rule 876 IAC 4.33.

That defendant shall file subsequent reports of injury as required by the agency.

Signed and filed this ____30th____ day of June, 2004.

STEVEN C. BEASLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Mr. Dennis M. McElwain
Attorney at Law
PO Box 1194
Sioux City, IA 51102-1194

Mr. James L. Drury
Attorney at Law
STE 713, 800 Stevens Port Dr.
Dakota Dunes, SD 57049-5005

SCB/pjs