

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAWAYNE LEACH,

Claimant,

vs.

DAHL'S FOODS,

Employer,

and

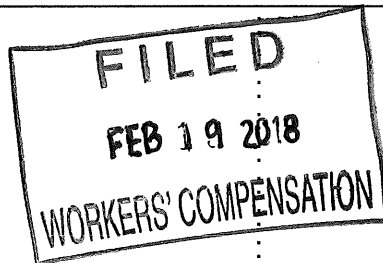
EMC PROPERTY AND CASUALTY
COMPANY,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.



File No. 5047957

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Dawayne Leach.

This alternate medical care claim came on for hearing on February 19, 2018. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1 and 2, and Defendants' Exhibits A and B.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of a functional capacity evaluation (FCE) for the upper extremity.

FINDINGS OF FACT

Defendants accept liability for a bilateral upper extremity injury to claimant occurring on March 25, 2014.

On August 7, 2017, claimant was evaluated by ZeHui Han, M.D. with Iowa Orthopedics. Claimant had undergone a right cubital tunnel release. Claimant complained of numbness and tingling. Claimant was told to return in four weeks. Claimant was released to return to work with no restrictions. (Exhibit A, pages 6-7)

On a September 3, 2017 Physical Therapy Order from Iowa Orthopedics, a request was made for a "one arm FCE" for claimant. (Ex. A, p. 5)

Claimant returned to Dr. Han on October 5, 2017 for follow-up of a right cubital tunnel release. Claimant was to have an FCE, but could not, at present, as he was recovering from knee surgery and did not have clearance from a heart surgeon. Claimant was released to return to work with no restrictions. (Ex. A, pp. 2-3)

In an October 27, 2017 note, Dr. Han noted claimant had a five percent permanent impairment on the left upper extremity, and a three percent permanent impairment on the right. Dr. Han indicated claimant had no restrictions. (Ex. A, p. 1)

In a November 14, 2017 email, claimant's counsel asked when the FCE would be rescheduled. In a November 15, 2017 response, defense counsel indicated Dr. Han said an FCE was not needed and was cancelled. (Ex. B, pp. 2-3)

In a November 30, 2017 letter, claimant's counsel asked Dr. Han if an FCE was still required. (Ex. 2, p. 3) After some back and forth communication, Dr. Han's office responded, in a December 5, 2017 email, that Dr. Han indicated "...that an FCE is required of Dawayne Leach before a determination can be made regarding his restrictions." (Ex. 2, p. 4)

In a December 11, 2017 email, claimant's counsel again requested defendants to reschedule the FCE for claimant based on the December 5, 2017 email from Dr. Han's office. In a December 11, 2017 email, defense counsel again indicated Dr. Han cancelled the FCE, as it was not necessary. (Ex. B, p. 1)

In a December 13, 2017 letter, claimant's counsel served defense counsel with the emails from Dr. Han's office. (Ex. 1, p. 1)

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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

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. Long v. Roberts Dairy Company, 528 N.W.2d 122 (Iowa 1995).

Defense counsel indicates claimant was released to return to work with no restrictions on at least three occasions by Dr. Han. This occurred in August, September and October of 2017. (Ex. A, pp. 1, 3, 4 and 7)

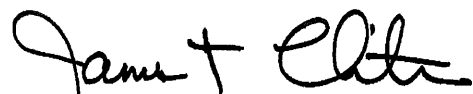
Claimant contends that the most recent directive from Dr. Han's office, a December 5, 2017 email, indicates claimant requires an FCE for his upper extremity. (Ex. 2, p. 4)

I do agree with claimant's counsel that records from August, September and October of 2017 suggest an FCE is not required. I also agree the form "Patient Status Reports" from Dr. Han are confusing, given the December 5, 2017 email. However, the most recent correspondence from Dr. Han's office, the December 5, 2017 email, indicates Dr. Han wants claimant to have an FCE for his upper extremity. (Ex. 2, p. 4) Given this record, claimant has carried his burden of proof he is entitled to alternate medical care consisting of the FCE for the upper extremity.

THEREFORE, IT IS ORDERED:

Claimant's petition is granted. Defendants shall authorize an FCE for claimant's upper extremity as indicated by the December 5, 2017 email from Dr. Han's office.

Signed and filed this 19th day of February, 2018.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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