IN THE IOWA DISTRICT COURT FOR POLK COUNTY

TERRY M. DOTTS, **Petitioner,** **v.** **CITY OF DES MOINES, IOWA,** **Respondent.**	**Case No. CVCV059520** **RULING ON JUDICIAL REVIEW**

This is a judicial review action from a decision of the Workers Compensation Commissioner (the commissioner) regarding alternative medical care. The court held a hearing on May 29, 2020. Chris Spaulding represented petitioner Terry Dotts. Luke DeSmet represented respondent City of Des Moines (the City).

STATEMENT OF THE CASE

The facts are largely taken from the decision of the deputy workers' compensation commissioner, but also directly from the medical notes. Mr. Dotts was injured on January 29, 2019, when he slipped on some ice while working for the City. Mr. Dotts suffered injuries to his left shoulder and neck. The City conceded that the injuries are work-related. Mr. Dotts has seen Dr. Stephen Aviles for the shoulder injury and undergone a rotator cuff repair. The record shows some continuing issues with the shoulder, but the subject of this case is the neck injury.

Mr. Dotts saw Dr. Trevor Schmitz on July 29, 2019. Dr. Schmitz noted degeneration of the cervical intervertebral disc, osteoarthritis of the cervical spine, and cervicalgia. He ordered an MRI before determining the next step. Mr. Dotts saw Dr. Schmitz on October 2, 2019, for the follow-up appointment. Dr. Schmitz diagnosed Mr. Dotts with bilateral carpal tunnel syndrome and cubital tunnel syndrome on his left side. He wanted to refer Mr. Dotts to a hand surgeon for evaluation for those conditions. As to the neck, Dr. Schmitz advised his belief that the benefits

of surgery would not outweigh the risks. He stated that he would see Mr. Dotts again on an as-needed basis.

There is no transcript of the hearing before the deputy, but the deputy stated in his ruling that Mr. Dotts testified that he attempted to schedule a follow-up visit with Dr. Schmitz to discuss treatment options other than surgery. He reported that Dr. Schmitz told him that he had nothing further to offer. Mr. Dotts expressly requested additional treatment for his neck on October 24, 2019. The City responded by stating that Dr. Schmitz had placed Mr. Dotts on maximum medical improvement (MMI). There is no medical record confirming that Dr. Schmitz will not see Mr. Dotts or that he has been placed at MMI. At hearing, the City stated that it would be willing to schedule a follow-up visit for Mr. Dotts with Dr. Schmitz. Mr. Dotts would like a second opinion, but there is no medical record recommending that request.

On November 25, 2019, Mr. Dotts filed an application for alternate care with the commissioner. He requested a second opinion for neck pain and limitations. The deputy held a hearing on December 9, 2019, and entered a ruling denying the request on the following day. The deputy found that there was no medical support for a second opinion. He found that the City had offered a follow-up appointment with Dr. Schmitz, which could lead to a recommendation for a second opinion, a referral to another provider, or some alternate treatment. He further found that Mr. Dotts had not alleged that his relationship with Dr. Schmitz had broken down, although Mr. Dotts was frustrated with his continuing neck pain. Dr. Schmitz had made a referral regarding carpal tunnel and cubital tunnel syndromes, so he showed willingness to make a referral with regard to these injuries. For these reasons, the deputy found that the treatment provided by the City was reasonable.

The deputy also noted that there were other means to obtain a second opinion. Once Dr. Schmitz released his impairment rating, Mr. Dotts would have a right to a second opinion for rating purposes under Iowa Code section 85.27. Treatment options could be included as part of that evaluation. Mr. Dotts could also obtain an evaluation at his own expense, and later seek reimbursement for treatment at the final workers' compensation hearing. Also, Mr. Dotts could file a later petition for alternate care if a later provider recommends different treatment.

STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The court "may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in section 17A.19(10)(a) through (n)." *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utilities Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)).

The courts use a substantial evidence standard when considering challenges to findings of fact in agency decisions. A reviewing court can only disturb factual findings if they are "not supported by substantial evidence in the record before the court when that record is reviewed as a whole." *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(*f*)). The Iowa Supreme Court has outlined the court's guidelines when reviewing substantial evidence claims under the 17A.19 standard as follows:

> When reviewing a finding of fact for substantial evidence, we judge the finding in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it. Our review of the record is fairly intensive, and we do not simply rubber stamp the agency finding of fact.

> Evidence is not insubstantial merely because different conclusions may be drawn from the evidence. To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder. Our task, therefore, is not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.

Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (internal citations and quotation marks omitted).

CONCLUSIONS OF LAW

Under the workers' compensation statute, the employer has the obligation to furnish reasonable medical services to treat an injured employee. Iowa Code § 85.27. In exchange for this obligation, the employer has the right to choose the care. *Id*. If the employee is dissatisfied with the care, the employee may communicate with the employer after which they may agree to alternate care reasonably suited to treat the injury. *Id*. If they cannot agree, the employee may file an application with the commissioner to make "reasonable proofs for the necessity therefor[.]" *Id*.

By challenging the employer's choice of treatment, the employee assumes the burden of proving that the authorized care is unreasonable. *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. *Id*. The ultimate question before the court on judicial review is whether substantial evidence supports the reasonableness determination. *Newt Marine Serv. DBA v. Abitz*, 885 N.W.2d 830 (Iowa Ct. App. 2016) (Table).

The competing sides of the reasonableness test were best explained and applied in *Long* and *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433 (Iowa 1997). In *Long*, the treating doctor had recommended further treatment at the Mayo Clinic or the University of Iowa Hospital (UI). *Long*, 528 N.W.2d at 124. The employee initially sought treatment at Mayo, but the

employer chose UI after Mayo wanted to perform a costly test before beginning treatment. The employee filed an application for alternate care seeking treatment at Mayo. The court affirmed the commissioner's finding that the employer's choice of care reasonably met the employee's needs because the treating physician had recommended either provider as reasonable. *Id*. The court made clear that the employee's *desire* for a certain treatment or provider is not determinative. *Id*. (emphasis in text). Rather, the employer's obligation turns on the question of reasonable necessity. *Id*.

In *Reynolds*, the employee had been treated for approximately a year for a leg injury. *Reynolds*, 562 N.W.2d at 437. The court found substantial evidence to show that the employee's pain had increased and his leg atrophied during the course of treatment. *Id*. Because the treatment provided by the employer-approved doctor had proven to be ineffective, the employee showed that the employer's care was not reasonably suitable to meet his medical needs. *Id*.

The present case is more like *Long*, at least at this stage of the proceedings. Mr. Dotts only saw Dr. Schmitz on two occasions – once for the initial assessment and second to discuss the MRI and potential treatment. Dr. Schmitz discussed surgery but did not recommend surgery due to the risks involved. Dr. Schmitz referred Mr. Dotts for further treatment for his carpel tunnel syndrome, but only stated that he would see him for his neck on an as needed basis. His notes reflect that he did not recommend, nor did he rule out, more moderate treatments such as physical therapy or injections. Mr. Dotts testified at hearing that he tried to see Dr. Schmitz, but the doctor would not see him. The City has offered to pay for another appointment with Dr. Schmitz. That seems reasonable at this point to determine Dr. Schmitz's treatment recommendation.

The standard of review is important in deciding this case. The agency cited to the City's offer to pay for a return appointment with Dr. Schmitz to determine whether other forms of treatment short of surgery he might recommend. Mr. Dotts may have been told by Dr. Schmitz's office that he did not need to see him, but the medical notes do not reflect that. Rather, the notes state that Dr. Schmitz would see him as needed. By returning to Dr. Schmitz, we will determine whether he recommends some alternate care. If Dr. Schmitz recommend some other provider or treatment, Mr. Dotts can try that. If not, he can pursue other options, which may include a new application for medical care. The commissioner's decision is supported by substantial evidence as there are facts in the record to show that the employer has offered reasonable care.

Mr. Dotts raised a concern with Iowa Code section 85.38(2) in that he may be responsible to pay for an evaluation if he is dissatisfied with any recommendations Dr. Schmitz makes or refuses to return to him. That may be true, but if so, that is how the statute works. The court must decide the current dispute before based on the applicable law. The law requires the court to evaluate the agency's decision based on the substantial evidence test. The agency decision meets that test, so the decision must be affirmed.

RULING

The agency decision is affirmed. Petitioner shall pay any court costs.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV059520	TERRY M DOTTS VS CITY OF DES MOINES IOWA

So Ordered

Jeffrey Farrell, District Court Judge,
Fifth Judicial District of Iowa