BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD FROST, Claimant, vs. WHIRLPOOL CORPORATION, Employer, Self-Insured, Defendant.	:	File No. 5060141.02 ALTERNATE MEDICAL CARE DECISION Head Note: 2701

STATEMENT OF THE CASE

On September 16, 2021, the claimant filed a petition for alternate medical care pursuant to Iowa Code 85.27(4) and 876 Iowa Administrative Code 4.48. The claimant served the defendant via certified mail. Claimant's attorney indicated that an attorney communicated with their office; however, no appearance or answer was filed. There is no indication that anyone representing the employer called into the agency to provide a phone number to be called during the hearing. The file does not show that this agency's notice of the hearing, sent to the employer, was returned as undelivered. No contact was made with the agency during the hearing inquiring why the employer was not called at the time designated for the hearing.

The undersigned presided over the hearing held via telephone and recorded digitally on September 29, 2021. That recording constitutes the official record of the proceeding pursuant to 876 Iowa Administrative Code 4.48(12). Claimant participated personally, and through his attorney, Tom Wertz. The evidentiary record consists of testimony from the claimant and Claimant's Exhibit 1.

On February 16, 2015, the Iowa Workers' Compensation Commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, this decision constitutes final agency action, and there is no appeal to the commissioner. Judicial review in a district court pursuant to Iowa Code Chapter 17A is the avenue for an appeal.

ISSUE

The issue under consideration is whether claimant is entitled to an order for alternate medical care via referral for a return visit to Dr. David Hart.

FINDINGS OF FACT

Claimant, Ronald Frost, has worked for Whirlpool Corporation for 28 years. (Testimony). He sustained an injury to his right shoulder while at work on November 8, 2016. (Petition; Testimony). As a result of his shoulder injury, he had a total shoulder replacement surgery to his right shoulder. (Testimony). Dr. David Hart performed the surgery, and treated Mr. Frost after the surgery. (Testimony).

Recently, Mr. Frost experienced increased right shoulder pain. (Testimony). He also noted that his right shoulder has been popping out in the front and the back. (Testimony). Mr. Frost contacted Dr. Hart's office to request an appointment. (Testimony). Dr. Hart's office told Mr. Frost that he needed authorization for a follow-up appointment. (Testimony). Mr. Frost reached out to his attorney, who contacted defendant requesting an appointment. (Testimony; Claimant's Exhibit 1:1). The defendant did not respond or authorize treatment with Dr. Hart. (Testimony).

CONCLUSIONS OF LAW

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obligated 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.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of

medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

By challenging the employer's choice of treatment, and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The claimant seeks a follow-up appointment with Dr. Hart due to continued right shoulder issues. Dr. Hart previously treated Mr. Frost for his right shoulder injury. The defendant did not authorize treatment prior to the hearing. Not authorizing treatment with Dr. Hart is unreasonable.

The claimant's petition for alternate care is granted. Within ten (10) days of the date of this decision, the defendant shall authorize care with Dr. Hart.

IT IS THEREFORE ORDERED:

1. The claimant's petition for alternate care is granted.

2. Within ten (10) days of the date of this decision, the defendant shall authorize care with Dr. Hart.

Signed and filed this 29th day of September, 2021.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Whirlpool Corporation (via certified and regular mail)
2800 220th Trl
Amana, IA 52204-0011