

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAL WELCH,

Claimant,

vs.

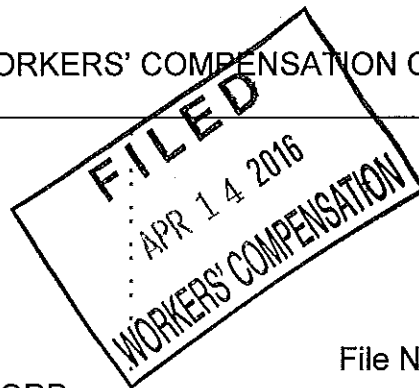
ANALYSTS INTERNATIONAL CORP.,

Employer,

and

TWIN CITY FIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5053331

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Michal Welch.

The alternate medical care claim came on for hearing on April 14, 2016. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibit 1; defendants' exhibits 1-7.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Michal Welch sustained an injury to his right leg arising out of and in the course of his employment with Analysts International Corporation on October 10, 2013. As a result of that injury he underwent surgery with William Jacobson, M.D. Unfortunately, Mr. Welch experienced post-operative complication and had a DVT blood clot in his right leg, below his knee. He was hospitalized for the blood clot. While in the

hospital claimant was treated by Stacey K. Neu, M.D., his primary care physician and by another doctor who Mr. Welch testified specialized in blood work. Since being released from the hospital Mr. Welch has primarily been treated for his DVT by Dr. Neu. On November 23, 2015, Dr. Neu prescribed 14 compression stockings for Mr. Welch. The prescription indicates the compression level of the stockings is 20-30. (Exhibit 1) Claimant would like defendants to be responsible for the cost of these stockings.

Defendants do not deny responsibility for the stockings. Rather, they dispute the quantity that claimant is seeking. Defendants contend that they should only be responsible for two pairs per year. In support of their position they rely on the opinion of Dr. Jacobson. On April 8, 2016, Dr. Jacobson signed a letter authored by defense counsel indicating that two pairs of stockings are appropriate per year for Mr. Welch's condition. (Defendants' Exhibits, page 1) Defendants also rely on a printout of Frequently Asked Questions about Juzo Compression Garments. (Def. Ex. p. 2) According to the printout, a new pair of compression stocking should be purchased every 6 months or as therapy progresses and new symptoms develop. Defendants also point out that last year they purchased 14 pair of stockings for the claimant and if each pair last 6 months then he should have an ample supply. (Def. Ex. pp. 3-7)

Claimant testified that he is currently employed by Casey's General Stores. In his current position he frequently travels and is on the road for one to two weeks at a time. Mr. Welch works 10-12 hours per day, mostly on his feet. He credibly testified that he changes his compression stockings every day. When he is traveling he simply does not have laundry facilities available to him. Furthermore, due to the long hours he works he does not have time to hand wash and dry the stockings. I find it is not reasonable for defendants to offer Mr. Welch only two pairs of compression stockings. Defendants rely heavily on the opinion of Dr. Jacobson and a FAQ printout. However, there is no evidence in the record to suggest that the authors of either of these exhibits had any knowledge about Mr. Welch's specific circumstances and need for multiple pairs.

Furthermore, Mr. Welch testified that the stockings he was previously wearing were causing his hip, leg, and foot to ache. Because of this, a specialist advised that the compression level of his stockings go down one level. This is why Dr. Neu prescribed the compression level of stockings as set forth in Exhibit 1. Therefore, the 14 pair that the defendants purchased for the claimant last year are not the currently prescribed compression level. I find it is not reasonable for the defendants to offer the incorrect compression level of stockings.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he 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.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

The employer shall 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. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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).

In the present case, I conclude that the two pairs of compression stockings being offered by defendants are not reasonable. Dr. Jacobson's opinion is based on an incomplete history because there is no evidence he is aware of Mr. Welch's daily activities which result in his need for more than two pairs of stockings. Dr. Neu has been treating Mr. Welch for his DVT condition. Mr. Welch testified that Dr. Neu is aware of his travel schedule and that is part of the reason she prescribed that quantity of stockings. Thus, I conclude the care being offered by defendants is not reasonable, and claimant's petition for alternate medical care should be granted. Defendants shall be responsible for the compression stockings as prescribed by Dr. Neu.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Defendants shall be responsible for the compression stockings as prescribed by Dr. Neu.

Signed and filed this 14th day of April, 2016.


ERIN G. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

James M. Ballard
Attorney at Law
14225 University Ave., Ste. 142
Waukegan, IA 50263
jballard@jmbfirm.com

Jessica Ruth Voelker
Attorney at Law
7300 - 110th St., Ste. 410
Overland Park, KS 66210
Jessica.voelker@thehartford.com

EQP/sam