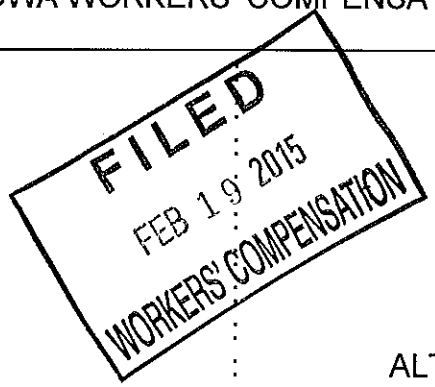
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



LARRY SIMON,

Claimant,

vs.

S.E. ELECTRIC,

Employer,

and

THE CINCINNATI INSURANCE COMPANIES,

Insurance Carrier,
Defendants.

File No. 5043801

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. Claimant sustained a stipulated work injury in the employ of defendant S. E. Electric on August 29, 2012. He now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call and fully submitted on February 19, 2015. The hearing was recorded via digital tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner, the undersigned was delegated authority to issue final agency action.

ISSUE

Liability is admitted on this claim. The sole issue presented for resolution is whether or not claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

Claimant was employed by S.E. Electric on August 29, 2012 when he suffered an electrical injury. The claimant seeks treatment as recommended by his independent medical evaluator, Marc Hines, M.D. The treatment was for the hands and back with

radiculopathy into the leg. Defendants have provided care to the claimant's knees and other body parts, but not for the back or hands.

CONCLUSIONS OF LAW

> [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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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 medical treatment provided by the defendants has not included the back or hands. The treatment, as specifically recommended by Dr. Hines, may not be the best medical course of action; that is not known. But no treatment is definitely not the answer. A true second independent opinion, specifically regarding care and treatment to the back and hands is necessary.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is approved as set out above.

Signed and filed this 19th day of February, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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