

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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EBE A. BOETTCHER,	<b>FILED</b>	
Claimant,	JUN 01 2016	
vs.	WORKERS COMPENSATION	File No. 5055851
UNIVERSITY OF IOWA HOSPITALS AND CLINICS,	:	ALTERNATE MEDICAL
STATE OF IOWA,	:	CARE DECISION
Self-Insured, Employer, Defendant.	:	HEAD NOTE NO: 2701

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STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Ebe Boettcher ("Boettcher") sustained a work-related injury to his brain and body as a whole, while working for the defendant, University of Iowa Hospitals and Clinics ("UIHC"). On May 18, 2016, Boettcher filed a petition for alternate medical care under Iowa Code section 85.27 and rule 876 IAC 4.48. Boettcher has requested the defendant approve treatment with Laurence Krain, M.D., a neurologist with Physicians' Clinic of Iowa, who is not affiliated with the UIHC. UIHC has refused to authorize treatment with Dr. Krain.

On May 19, 2016, this division filed a notice of telephone hearing, scheduling a telephone hearing for May 31, 2016, at 8:30 a.m. A copy of the notice was mailed to the parties.

A telephone hearing was held on May 31, 2016 at 8:30 a.m. Attorney Patrick O'Connell represented Boettcher. Boettcher appeared and testified. Assistant Attorney General Jonathan Bergman represented the defendant. Sarah Short, with Sedgwick appeared and testified on behalf of the defendant. Claimant's Petition with the Addendum, and Defendant's Answer and Exhibits A through C were admitted into the record. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

#### FINDINGS OF FACT

Boettcher is employed as a respiratory therapist for the UIHC and works in the cardiac intensive care unit, medical intensive care unit, surgical intensive care unit, the respiratory specialty care unit, and the neonatal intensive care unit. (Boettcher Testimony) Boettcher sustained a work-related brain injury while working for the UIHC on January 26, 2016. (Petition) On the date of his injury, Boettcher reported his injury to his supervisor, in the respiratory care department of the UIHC. (Boettcher Testimony) Boettcher was initially seen in the UIHC emergency room at the time of his injury. (Boettcher Testimony)

As a respiratory therapist Boettcher interacts with physicians in the various intensive care units and the respiratory specialty care unit, but he is not subject to their direct supervision. (Boettcher Testimony) At the time of his injury, Justin Kuhn served as Boettcher's direct supervisor, and Kuhn reported to Lou Anne Wilford, a clinical supervisor in respiratory care. (Boettcher Testimony)

The UIHC contracts with Sedgwick, a third party administrator, to process its workers' compensation claims. (Short Testimony) Short was assigned to work with Boettcher on January 26, 2016, and Boettcher spoke with Short on January 27, 2016. (Short Testimony) The UIHC sent Boettcher for treatment with Patrick Hartley, M.D., an occupational medicine physician. (Boettcher Testimony) Dr. Hartley is the director of UI HealthWorks, which provides comprehensive workers' compensation services, the UIHC Employee Health Clinic, and he is a pulmonary specialist for the UIHC. Dr. Hartley is Boettcher's treating physician.

The UIHC arranged for Boettcher to be evaluated by E. Torage Shivapour, M.D., a neurologist with the UIHC, on February 5, 2016. (Boettcher Testimony) Dr. Shivapour recommended Boettcher see Deema Fattal, M.D., a neurologist specializing in balance disorders at the UIHC. (Boettcher Testimony) Dr. Fattal has an 18 month waiting list for new patients, but the UIHC was able to arrange an appointment for Boettcher to see Dr. Fattal on February 15, 2016. (Boettcher Testimony)

Boettcher was also referred to Daniel Tranel, Ph.D., a neuropsychologist, with the UIHC. (Boettcher Testimony) Boettcher's treating specialists have recommended and the defendant authorized physical therapy, occupational therapy, vestibular therapy, and speech therapy for Boettcher at St. Luke's Hospital in Cedar Rapids, Iowa. (Boettcher Testimony) Defendant has also authorized psychotherapy for Boettcher with Frank Gersh, Ph.D., of Iowa City. (Boettcher Testimony) Boettcher is scheduled to commence treatment with Dr. Gersh on June 21, 2016. (Boettcher Testimony)

Defendant has not refused to authorize any of the treatment recommended by Boettcher's treating physicians. (Short Testimony)

Boettcher has requested treatment from the defendant with Dr. Krain, a neurologist located in Cedar Rapids, Iowa. (Petition) Boettcher testified the care he has received from the defendant is unreasonable because Drs. Hartley, Shivapour, Fattal, and Tranel work for his employer and owe a duty of loyalty to his employer, the authorized treating physicians have not performed additional laboratory work to test for endocrine deficiencies, the authorized treating physicians have not addressed his headaches and other neurological symptoms, and the authorized treating physicians have focused on psychological, as opposed to neurological aspects in treating him. (Boettcher Testimony) Defendant has refused to authorize treatment with Dr. Krain, but have authorized additional treatment from any of the approved treating physicians who have provided care to Boettcher to date. (Short Testimony) Boettcher has not requested additional care from any of the authorized treating physicians to date. (Short Testimony)

#### REASONING AND CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2015). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). The determination of whether care is reasonable is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Boettcher alleges the care he has received from the defendant is unreasonable because Drs. Hartley, Shivapour, Fattal, and Tranel work for his employer and owe a duty of loyalty to his employer, the authorized treating physicians have not performed additional laboratory work to test for endocrine deficiencies, the authorized treating physicians have not addressed his headaches and other neurological symptoms, and the authorized treating physicians have focused on psychological, as opposed to neurological aspects in treating him. (Boettcher Testimony) Defendant has promptly authorized the care requested by Boettcher's treating physicians. Boettcher is receiving physical therapy, occupational therapy, vestibular therapy, speech therapy, and he will

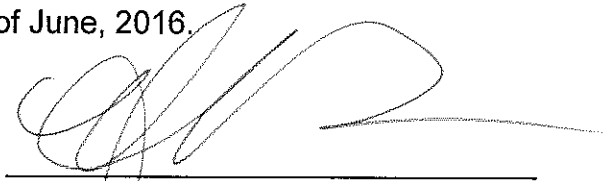
be receiving psychotherapy. Boettcher's mere dissatisfaction with the care he is receiving is not grounds for granting his petition. Boettcher has not established the care he is receiving is unreasonable.

ORDER

THEREFORE IT IS ORDERED:

Boettcher's petition for alternate care is denied.

Signed and filed this 1<sup>st</sup> day of June, 2016.



HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Patrick O'Connell  
Attorney at Law  
PO Box 2457  
Cedar Rapids, IA 52406-2457  
poconnell@lynchdallas.com

Jonathan Bergman  
Assistant Attorney General  
Special Litigation  
Hoover State Office Bldg.  
Des Moines, IA 50319-0106  
jonathan.bergman@iowa.gov

HLP/srs