

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LESLEE LOFFER,

Claimant,

vs.

FEDEX GROUND PACKAGE SYSTEM  
INC.,

Self-Insured Employer,

Defendant.

File No. 23700155.03

ALTERNATE MEDICAL CARE

DECISION

Headnote: 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, Leslee Loffer.

The alternate medical care claim came on for hearing on May 4, 2023. Claimant appeared through her attorney Matthew Dake. Defendant appeared through their attorney Bryan Brooks. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding.

Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The hearing record consists of Claimant's amended exhibits 1-4. Counsel for both parties provided argument. The record closed at the end of the alternate medical care telephonic hearing.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of:

- Authorization to treat with Austin Ramme, M.D.

## FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

On November 25, 2022, claimant sustained a work-related injury to her left shoulder. (See Petition; Hearing Testimony). The defendant admitted liability for the injury and authorized treatment with Kyle Switzer, M.D. at Physicians' Clinic of Iowa. (Hearing Testimony; Ex. 1). Claimant was evaluated by Dr. Switzer on April 4, 2023. (Ex. 1). Dr. Switzer's treatment note indicates claimant's left shoulder was injured while pushing a box on a conveyor belt. (Id.). An MRI was taken. (Id.). It showed tendinitis of the biceps tendon, but no significant labral or rotator cuff pathology. (Id.). Dr. Switzer recommended an injection to her left biceps tendon sheath and provided updated work restrictions. (Id. at 2).

On April 17, 2023, claimant filed an alternate care petition requesting that the defendant authorize the injection recommended by Dr. Switzer. (See Petition in File No. 23700155.02). On April 18, 2023, claimant filed a motion to dismiss her alternate care action because the defendant had already authorized the injection recommended by Dr. Switzer. (See Motion to Dismiss). Dr. Switzer's office scheduled claimant's left bicep injection for June 19, 2023. (Ex. 2). On April 24, 2023, claimant's counsel wrote to the defendant stating that the appointment date provided was unacceptable. (Id.). Claimant's counsel indicated claimant was in pain and could not wait two months for the injection. (Id.). Included with this letter was a copy of an email from claimant's counsel's office sent earlier that morning to the workers' compensation coordinator at Steindler Orthopedic Clinic asking about the wait times to make an appointment with Austin Ramme, M.D. (Ex. 3). The coordinator's reply reads "Generally speaking, I would say at this time 2-3 weeks out is where we are scheduling for Dr. Ramme." (Id.). A CV for Dr. Ramme was also attached to the email. (Id.). It indicates Dr. Ramme is an orthopaedic surgeon, focusing on knees and shoulders. (Ex. 4). Claimant's counsel asked the defendant to authorize treatment with Dr. Ramme for claimant's left and right shoulders.<sup>1</sup> (Ex. 2). Claimant filed a petition for alternate medical care that same day, requesting authorization to treat with Dr. Ramme. (See Petition).

During the hearing, claimant's counsel argued that waiting over two months for an injection was not reasonable. (Hearing Testimony). He alleged that Dr. Switzer's office has a backlog, and there are other doctors who could provide claimant with the same care sooner. (Hearing Testimony). However, he could not confirm that Dr. Ramme would give claimant the injection to her biceps tendon when he initially saw her in 2-3 weeks. (Id.). Defendant's counsel argued that it was more likely Dr. Ramme would evaluate claimant's left shoulder at her first visit in 2-3 weeks, but not actually provide the requested injection until a later visit. (Id.). Given this, the defendant alleged it was unlikely Dr. Ramme's office could provide the requested injection sooner than the current visit

---

<sup>1</sup> Claimant has a separate workers' compensation claim for an injury to her right shoulder. (See Hearing Testimony).

scheduled with Dr. Switzer on June 19, 2023. (Id.). In the meantime, claimant is participating in conservative care as recommended by Dr. Switzer, including physical therapy, and taking pain medication. (Id.). The email sent to Dr. Ramme's office did not request information on how soon he could perform an injection, it only asked how long it normally takes patients to "get into Dr. Ramme." (Ex. 3).

### CONCLUSIONS OF LAW

Under Iowa law, an employer who has accepted compensability for a workplace injury has a right to control the care provided to the injured employee. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016). The relevant statute provides as follows:

For purposes of this section, the 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.

Iowa Code § 85.27(4).

Defendant's "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id. An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. See Iowa Code § 85.27(4). 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, 528 N.W.2d at 124. Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

Under Iowa Code section 85.27, claimant bears the burden of providing "reasonable proofs of the necessity" to order alternate care. The defendant has already authorized care with Dr. Switzer for claimant's left shoulder condition. They have authorized and provided physical therapy and pain medication. They have also approved and scheduled the recommended injection with Dr. Switzer for June 19, 2023. This


appears reasonable. Claimant contends that waiting until June for the injection is unreasonable. She offers evidence that patients can generally get an appointment with Dr. Ramme in 2-3 weeks. However, her evidence is silent on how quickly Dr. Ramme could or would provide an injection—which is the crucial question in this proceeding.

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” than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). As stated above, claimant did not provide any evidence on how quickly Dr. Ramme could or would provide her with the recommended injection—just general evidence about his availability. Given this, claimant has not met her burden to show that the care being offered by Dr. Switzer is inferior to the care being offered by Dr. Ramme. Claimant did not meet her burden. Her request for alternate medical care with Dr. Ramme is denied.

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is denied.

Signed and filed this 8th day of May, 2023.

  
AMANDA R. RUTHERFORD  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Dake (via WCES)

Bryan Brooks (via WCES)