

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MAVERICK SHOWALTER,

Claimant,

**VS.**

LEFEBVRE & SONS,

Employer,

and

GREAT WEST CASUALTY COMPANY,

Insurance Carrier,  
Defendants.

File No. 1650992.01

ALTERNATE MEDICAL

## CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the “alternate medical care” rule, are invoked by claimant, Maverick Showalter.

This alternate medical care claim came on for hearing on December 16, 2019. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibits 1-3, and Defendants' Exhibit A.

## ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for an MRI.

## FINDINGS OF FACT

Defendants accepted liability for claimant's July 5, 2018 work injury to the shoulder.

Claimant had arthroscopic surgery on his right shoulder with Gregory Hill, M.D. on September 11, 2018. (Exhibit 3, page 2)

Claimant had a second MRI on February 21, 2019. (Ex. 3, p. 2)

On March 4, 2019 claimant was evaluated by Dr. Hill. Claimant still had shoulder pain. Claimant was told by Dr. Hill his MRI suggested the shoulder repair was intact. (Ex. A, p. 1)

Claimant returned to Dr. Hill on April 5, 2019, eight months following surgery. Claimant still had pain in the anterior shoulder. An interarticular glenohumeral cortisone joint injection was recommended. (Ex. A, p. 2)

On April 18, 2019, claimant underwent an injection in the right shoulder performed by James Huber, D.O. (Ex. A, p. 3) This injection did not give significant relief. (Ex. 3, p. 2)

In a September 11, 2019 report, Thomas Gorsche, M.D., gave his opinion of claimant's condition following an independent medical exam (IME). Claimant had constant right shoulder pain, worsened with movement. Claimant had numbness in the fourth and fifth fingers. Claimant's pain radiated from the shoulder into the neck and across the clavicle. Claimant had been unable to pass a physical to drive a semi-truck. (Ex. 3, p. 3)

Dr. Gorsche recommended a cortisone injection in the bicipital groove. If it failed to give relief, claimant should be at maximum medical improvement (MMI). If it gave relief, a bicep tenotomy or bicep tenodesis may be considered. (Ex. 3)

On September 27, 2019, claimant was seen by Dr. Huber. Claimant was given a right bicipital groove injection. (Ex. 1)

Claimant returned to Dr. Huber on October 11, 2019. Claimant had mild improvement with pain, but still had significant pain with movement. Claimant had limited range of motion. Dr. Huber recommended an MRI as claimant had no significant change in pain after the injection. Claimant's exam was still significant for labral issue. Claimant was given medication to help with anxiety for the MRI. (Ex. 2)

In a December 3, 2019 email, defendants' counsel indicated Dr. Huber was only authorized to give the injection and was not authorized to treat or run tests on claimant. Dr. Gorsche did not recommend an MRI and therefore the MRI, recommended by Dr. Huber, was denied. (Ex. A, p. 8)

In a December 4, 2019 email from Dr. Gorsche to defendants' counsel, Dr. Gorsche wrote "MRI not needed, he is at MMI . . ." (Ex. A, p. 6)

#### CONCLUSIONS OF LAW

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

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.

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).

Referral by an authorized physician to another practitioner routinely is found to be authorized. The doctor making the referral acts as the employer's agent. Limoges v. Meier Auto Salvage, 1 Industrial Comm'r Rep. 207 (April 16, 1981); Kittrell v. Allen Memorial Hosp., 34 Biennial Rep., Iowa Ind. Comm'r 164 (1979).

Dr. Huber was authorized by defendants, on at least two occasions, to treat claimant. Defendants authorized Dr. Huber to give claimant a bicipital injection in mid-September of 2019. (Ex. A, p. 7) Defendants contend Dr. Huber was only authorized to give the injection and was not authorized to furnish any other care. There is no evidence in the record Dr. Huber's treatment was solely limited to giving an injection, until after the recommendation for the MRI. The record indicates Dr. Huber gave claimant a follow-up exam after the injection. Obviously, from the record, Dr. Huber was not informed his treatment was limited solely to giving claimant an injection.

Defendants also contend Dr. Gorsche limited claimant's further treatment to only an injection by Dr. Huber. Dr. Gorsche notes in his IME report:

The independent medical examination process was explained to Mr. Showalter. He understands that no patient/treating physician relationship was established.

(Ex. 3, p. 1)

In brief, Dr. Gorsche is not an authorized treating physician.

Dr. Huber was authorized to treat claimant. Dr. Huber has recommended claimant undergo another MRI to the shoulder. There is no evidence in the record Dr. Huber's authorized treatment was limited only to giving claimant an injection. Dr. Gorsche is not an authorized treating physician in this situation. Dr. Huber has actively treated claimant. As a practical matter, he has more familiarity with claimant's

medical presentation that does Dr. Gorsche. Dr. Huber last treated claimant on October 11, 2019. Dr. Gorsche last saw claimant on September 11, 2019. This suggests Dr. Huber has a better understanding of what claimant's present condition is, than does Dr. Gorsche. Claimant still has shoulder pain and desires to have the MRI.


Dr. Huber, an authorized treating physician, recommended claimant have another MRI to the shoulder. For this reason, and for the facts as detailed above, defendants' denial of the MRI is found to be unreasonable. Given this record, claimant has carried his burden of proof he is entitled to the requested care.

ORDER

THEREFORE, IT IS ORDERED:

That claimant's petition for alternate medical care is granted. Defendants shall provide claimant with the MRI as recommend by Dr. Huber.

Signed and filed this 16<sup>th</sup> day of December, 2019.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Novak (via WCES)

Stephen Spencer (via WCES)