BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

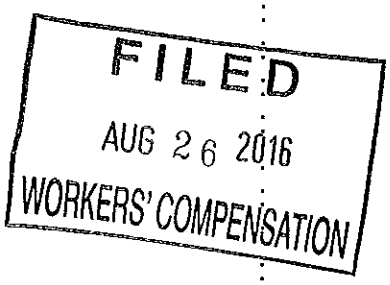
RUSSELL NORTHOUSE,

Claimant,

vs.

NORDSTROM'S,

Employer,
Self-Insured,
Defendant.



File No. 5055363

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

On August 15, 2016, claimant filed an application for alternate medical care under Iowa Code section 85.27 and rule 876 IAC 4.48. A hearing was held on August 25, 2016. All parties were given proper notice. The record consists of testimony of the claimant, claimant's exhibits 1-3, and defendants' exhibits A – E. All exhibits were admitted without objection.

ISSUE

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

FINDINGS OF FACT

Claimant sustained an injury on January 18, 2013, which arose out of and in the course of employment. Claimant is dissatisfied with the medical treatment offered by the defendant as he believes he is entitled to a transfer of care to either Dr. Hart in Cedar Rapids or Dr. Nepola in Iowa City as recommended by the IME doctor retained by the claimant, Dr. Taylor.

Claimant sustained a shoulder injury in January 2013 when a box fell from above his head, striking his shoulder. He received care from a nurse practitioner in Dubuque and was referred to physical therapy. When his pain did not abate, he was referred to Scott Schemmel, M.D. Initially, Dr. Schemmel recommended athroscopic surgery to explore the shoulder to determine if there was a repairable injury and possibly repair if an injury was found.

Claimant was sent for a second opinion with David S. Field, M.D., who agreed with Dr. Schemmel's plan. He found that claimant had shoulder pain aggravated by

activity and despite the normal MRI study, a diagnostic study was reasonable. He also recommended a mini-functional capacity evaluation as "a final option to identify his overall strength and weaknesses." (Ex. C)

Defendants conducted surveillance which showed claimant lifting four cases of beer at approximately 25 pounds each. This surveillance video was forwarded to Dr. Schemmel who was unhappy with claimant's non compliance. (Ex. A) The claimant was under a 10-pound weight restriction at the time and believed that claimant was exceeding that by lifting between 31 and 76 pounds. (Ex. A) Claimant testified that at the most, he was lifting 25-50 pounds.

Based on the video, Dr. Schemmel retracted his recommendation for exploratory arthroscopy and stated, "In light of the noncompliance, I would consider the patient to be at MMI and have no permanent partial disability from his work event." (Ex. A) On February 7, 2014, Dr. Schemmel went on to refuse to continue to treat claimant.

> As a surgeon, I am very reluctant to and will try and avoid performing an operation on any patient whose ability to understand or comply with necessary restrictions and modifications in activity is in doubt. Unfortunately, Mr. Northouse has put his ability to comply in doubt, and therefore I am no longer willing to proceed with surgery on him.

(Ex. B)

Dr. Field was also asked for an updated opinion on July 17, 2016. (Ex. E) Based on the surveillance and the response of Dr. Schemmel, Dr. Field recommended a complete FCE to:

> [A]ssess at this point in time his true strengths and the validity of his complaints based on that study alone. If there is some validity to his examination, then one can either consider a repeat study, i.e., an arthrogram of the shoulder, since he has already had an MRI/arthrogram, it may be reasonable to do so. . . . A recent IME has been based on range of motion loss which is not truly related to any definitive pathology, and thefore I feel is invalid based on that alone.

(Ex. E)

It should be noted that claimant was not examined by Dr. Field since 2013. The IME referred to by Dr. Field was conducted by Mark Taylor on March 8, 2016, and shared with the defendants on May 2, 2016. (Ex. 1) The IME revealed the following:

> He had a normal sensory exam throughout the upper extremities to pinprick, vibration and light touch. His deep tendon reflexes were trace to 1+/4 in the upper extremities. Inspection of the right shoulder posteriorly revealed slight atrophy in the region of the supraspinatus on the right compared to the left. Otherwise, there was no significant asymmetry. He

> had palpable tenderness over the right AC joint as well as over the lateral shoulder just under the tip of the acromion. He also had tenderness anteriorly over the bicipital groove and this extended toward the anterior glenohumeral joint as well as mild tenderness posteriorly. I also noted on a couple of occasions the grinding/popping sensation with movement of the right shoulder. He had a positive Yergason's, Speed's, Neer's, Hawkins' and Jobe's test on the right. All testing was negative on the left. Spurling's maneuver was negative, as was Hoffmann's sign.

(Ex. 2, p. 4) Dr. Taylor opined that claimant's ongoing pain needed additional treatment. Specifically, he wrote, "Mr. Northouse should be referred for another opinion with regard to his right shoulder. If there is another surgical office in Dubuque that he could see, that would be reasonable. Another option would be Dr. Hart in Cedar Rapids, Iowa." (Ex. 2, p. 6)

After Dr. Schemmel refused to treat claimant, the case lay dormant until the claim was filed in January 2016. Claimant did not ask for additional care until May 2, 2016.

Claimant was asked to resign at some point after his injury. In the following months and years, claimant sought employment with Sam's, Wal-mart and Lowes. He eventually left Wal-mart and Lowes due to the work load being too difficult because of his shoulder pain. He currently works as a telemarketer.

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).

Currently, there appears to be no care offered to the claimant. Dr. Field recommended an FCE on July 17, 2016. It is now August 25, 2016. Upon questioning, defendants admitted that no FCE is currently scheduled although they did represent that the issue was being looked into. However, there is presently no care to be judged reasonable or unreasonable at this juncture.

The evaluation performed by Dr. Field was not an examination of the claimant, but a review of records and surveillance. Claimant has not been seen by an authorized provider since before January 17, 2014. However, the claimant did not request care from 2014 to May 2016. Since May, there has been no medical care offered to the claimant. The evaluation by Dr. Field is not medical care given that he did not examine the claimant and no appointment for a medical visit is in evidence. When questioned about the FCE, the defendants asserted that they were attempting to find a local examiner but have not located one. In sum, there are no appointments for the claimant and no doctor or health care provider has been identified.

The care provided to the claimant has not been reasonable, prompt or adequate to treat the accepted injury. Defendant's failure to offer any medical care since May 2, 2016, is unreasonable and constitutes an abandonment of defendant's obligation to provide claimant medical care under Iowa Code section 85.27. Claimant has established by a preponderance of the evidence that defendant has not provided prompt medical care reasonable suited to treat his injury.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted and defendant is ordered to provide claimant medical treatment for his work-related injury including but not limited to an FCE and any other medical care deemed reasonable and adequate to treat claimant's shoulder injury.

Signed and filed this 26th day of August, 2016.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Mark J. Sullivan
Attorney at Law
PO Box 239
Dubuque IA 52004-0239
sullivan@rkenline.com

James M. Peters
Attorney at Law
115 Third St., SE, Ste. 1200
Cedar Rapids, IA 52401-1266
jpeters@simmonsperrine.com

JGL/kjw