

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEFFREY PITTS,

Claimant,

vs.

TPI COMPOSITES, INC.,

Employer,

and

AIU INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 21015389.05

ALTERNATE MEDICAL CARE

DECISION

Head Note: 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, Jeffrey Pitts.

This alternate medical care claim came on for hearing on November 28, 2022. 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 by petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of Claimant's Exhibit 1 and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of further treatment with Steve Scurr, D.O. At hearing claimant also asked a finding be made that defendants have abandoned care. Claimant also asked for an order allowing claimant to seek his own treatment for his work-related injury and that defendants be required to pay for that treatment.

FINDINGS OF FACT

Defendants accept liability for a work-related accident on March 18, 2021, only to claimant's left hand.

Claimant testified he had a work-related electrocution injury at work with his former employer TPI, on March 18, 2021. Claimant said he had a burn injury to his hand. Claimant said his employer directed him to on-site care for his burn injury. Claimant said he requested TPI send him to a doctor, but TPI told him on-site care was sufficient.

Claimant said that on or about May 2, 2021, he went to the emergency room as his right leg was swollen and throbbing. Claimant said he also had a sore or blister on the bottom of his right foot. Claimant said an emergency room doctor told him he had an electrocution burn on his right foot and he needed to see a wound care specialist.

Claimant said that on May 3, 2021, he took his emergency room medical records to TPI and asked to be sent to a burn doctor. Claimant said TPI sent him home for two days to stay off his feet and elevate his leg. Claimant said he returned to TPI on or about May 5, 2021 and was fired for allegedly hiding a workers' compensation injury. Claimant said TPI did not provide him with any further medical care.

Claimant said he asked TPI to send him to Michael McCune, M.D. for treatment. He said because TPI initially declined that request, he filed a petition for alternate medical care on or about November 8, 2021. On November 18, 2021, defendants agreed to authorize claimant to treat with Dr. McCune under a consent order.

On February 24, 2022, claimant filed a second petition for alternate medical care. That petition was dismissed when an agreement for treatment was reached by the parties.

On October 11, 2022, claimant filed a third petition for alternate medical care requesting follow up treatment with Dr. McCune. In an October 24, 2022, consent order, defendants agreed to provide authorization for care for claimant with Dr. McCune.

This petition is the fourth petition for alternate medical care claimant has filed regarding treatment for his work-related electrocution injury with TPI.

Claimant said he contacted Dr. McCune's office to schedule further treatment but was told Dr. McCune declined to treat him.

In a November 4, 2022 letter, written by claimant's counsel, Dr. McCune recommended claimant schedule an appointment with a primary care provider for ongoing care regarding his work-related electrocution injury and recommended claimant treat with Steven Scurr, D.O. (Exhibit 1) Claimant testified he has never treated with Dr. Scurr.

Claimant testified he believes defendants have delayed his care. Claimant said he has constant pain in his foot and shooting pains in his foot through the shin. He said he is unable to move four of the toes on his foot and limps when he walks.

#### CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

Iowa Code section 85.27 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.

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). 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. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, Iowa Industrial Commissioner Reports 207 (1981).

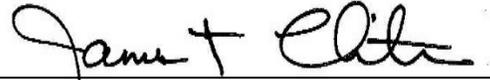
Dr. McCune is an authorized provider. Dr. McCune has recommended claimant seek further treatment with Dr. Scurr. Given this record, claimant has carried his burden of proof he is entitled to alternate medical care with Dr. Scurr.

Claimant also contends defendants have routinely delayed care and have, as a result, abandoned care. The administrative file does indicate claimant has filed four alternate medical care petitions in this case regarding his electrocution injury. The record suggests defendants have routinely delayed care with claimant. However, the record also indicates that on at least two occasions defendants have agreed to authorize requested care. The record also indicates the recent delay in care regarding claimant's treating with Dr. McCune has not been due to the fault of defendants, but is due to Dr. McCune declining to treat claimant. Given this record, claimant has failed to carry his burden of proof there has been an abandonment of care. Defendants are given notice there is an administrative record before this agency suggesting a delay of care for claimant. Further delays in care may result in a finding of an abandonment of care.

ORDER

Therefore, it is ordered that claimant's petition for alternate medical care is granted, in part, and denied in part. Defendants shall authorize and pay for treatment for claimant with Dr. Scurr. Defendants are not found, at this time, to have abandoned claimant's care.

Signed and filed this 28<sup>th</sup> day of November, 2022.



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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Timothy Wegman (via WCES)