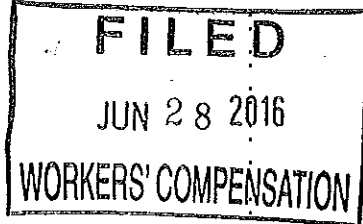


BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN BUTLER,
Claimant,

vs.

CITY OF WATERLOO,
Employer,
Defendant.



File No. 5055929

ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Kevin Butler. Claimant filed a petition on June 14, 2016. He alleged at paragraph 5 of his petition:

Reason for dissatisfaction and relief sought: Although two physicians, including one retained by Defendant, have opined that Claimant's carpal tunnel syndrome is causally related to his work at Defendant, Defendant has failed to authorize and provide treatment.

Defendant filed an answer on June 22, 2016. Defendant admitted liability for the bilateral carpal tunnel condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on June 28, 2016. The proceedings were recorded digitally, and constitute the official record of the hearing. By an order filed February 16, 2015 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 evidentiary record consists of claimant's exhibit 1, defendant's exhibits A through F, and the testimony of the claimant.

ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of treatment at the University of Iowa Hospitals and Clinics for the bilateral carpal tunnel condition.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Claimant's testimony was clear, direct, and consistent with the evidence considered. The undersigned is presented with no reason to doubt claimant's veracity. Claimant is found credible.

Claimant has alleged he developed bilateral carpal tunnel syndrome as a result of a cumulative work injury manifesting on April 4, 2016 or May 18, 2016. Review of the procedural history of another of claimant's claims against defendant is relevant to consideration of claimant's request for alternate care in this file.

In a separate and distinct file, File No. 5054780, claimant alleged he suffered an injury to his cervical spine and/or left shoulder with potential injury dates of October 1, 2014 and/or October 19, 2015. In November 2015, claimant filed a petition for alternate medical care, seeking treatment of his cervical complaints. Defendant denied liability for the complaints and claimant's alternate medical care petition was ordered dismissed on November 19, 2015.

Claimant sought care of his cervical condition at the University of Iowa Hospitals and Clinics (UIHC) with Chandan Reddy, M.D. Dr. Reddy's medical notes reflect claimant suffered with complaints in his neck and bilateral upper extremities. Claimant ultimately underwent a C6-C7 anterior cervical discectomy and fusion by Dr. Reddy on January 13, 2016. Following surgery, claimant noted resolution of neck pain and radiation to the left arm; however, carpal tunnel symptoms remained. On April 4, 2016, Dr. Reddy recommended claimant undergo bilateral carpal tunnel releases. He opined claimant's work for defendant aggravated claimant's bilateral carpal tunnel syndrome to a degree that he now required surgical intervention. (Exhibit 1, pages 1-3)

Claimant testified although he returned to work on February 29, 2016, he never complained to defendant directly regarding carpal tunnel complaints. Claimant explained he believed his bilateral upper extremity complaints were arising from his neck/shoulder condition. (Claimant's testimony) On April 11, 2016, following receipt of Dr. Reddy's opinion, claimant requested authorization of the surgeries recommended by Dr. Reddy. (Ex. 1, p. 4)

On April 25, 2016, claimant filed a petition for alternate medical care requesting authorization of the bilateral carpal tunnel releases recommended by Dr. Reddy. The matter was set for telephonic hearing on May 5, 2016. On April 28, 2016, defendant filed an answer disputing liability on the claim. Accordingly, claimant's petition was ordered dismissed.

On May 9, 2016, defendant's counsel authored a letter to claimant's counsel and thereby indicated defendant was denying liability for the alleged carpal tunnel injury with a manifestation date of April 4, 2016. Defendant based the denial upon claimant's failure to report an alleged injury, lack of report of carpal tunnel complaints, and a prior report of Thomas Gorsche, M.D., dated November 5, 2014, whereby Dr. Gorsche opined claimant's carpal tunnel condition was not work related. (Ex. 1, p. 5) Review of Dr. Gorsche's correspondence of November 5, 2014 reveals Dr. Gorsche opined claimant's carpal tunnel complaints were not related to the alleged October 1, 2014 injury. (Ex. A)

Following defendant's denial of liability, claimant's counsel represented claimant sought evaluation at UIHC by Dr. Erica Lawler, a hand specialist. Dr. Lawler's medical notes are not in evidence; however, claimant's counsel represented Dr. Lawler recommended bilateral carpal tunnel releases and these surgeries have been scheduled for July 5 and July 19, 2016.

Defendant arranged for a repeat evaluation of claimant by Dr. Gorsche on May 18, 2016. Following evaluation, Dr. Gorsche reiterated his opinion claimant's alleged October 1, 2014 injury did not cause claimant's carpal tunnel syndrome. However, he opined claimant's work duties for defendant probably were related to, or at least aggravated, claimant's carpal tunnel syndrome. (Ex. 1, pp. 6-7; Ex. B)

On May 31, 2016, claimant inquired whether defendant had reevaluated their denial as a result of Dr. Gorsche's opinion. (Ex. 1, p. 8) On June 7, 2016, defendant's counsel advised claimant's counsel he was awaiting defendant's decision on whether or not to authorize carpal tunnel treatment. (Ex. 1, p. 9)

On June 13, 2016, defendant's counsel notified claimant's counsel that defendant authorized treatment of the carpal tunnel condition with Dr. Gorsche. (Ex. C) Defendant's counsel subsequently advised that an appointment was scheduled for claimant with Dr. Gorsche on June 28, 2016. (Ex. D)

On June 24, 2016, defendant's counsel denied claimant's request for treatment at UIHC. Counsel restated the basis for the original denial of the carpal tunnel syndrome claim and reiterated care was authorized with Dr. Gorsche. (Ex. F)

Claimant expressed dissatisfaction with the care offered by defendant with Dr. Gorsche. Claimant testified he previously underwent a surgical procedure with Dr. Gorsche in 2003 or 2004. Following this shoulder procedure, claimant testified he developed an infection and the surgery did not resolve his complaints. Claimant testified he ultimately required a second surgical procedure on the shoulder with Dr. Nepola at UIHC. Claimant testified he lacks "confidence" in Dr. Gorsche as a physician due to this past experience. Claimant requests the undersigned order defendant to authorize care with Dr. Lawler at UIHC. (Claimant's testimony)

CONCLUSIONS 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. 6.14(6).

The employer shall 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. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

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 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975).

Alternate care included alternate physicians when there is a breakdown in a physician/patient relationship. Seibert v. State of Iowa, File No. 938579 (September 14, 1994); Nueone v. John Morrell & Co., File No. 1022976 (January 27, 1994); Williams v. High Rise Const., File No. 1025415 (February 24, 1993); Wallech v. FDL, File No. 1020245 (September 3, 1992) (aff'd Dist Ct June 21, 1993).

“Determining what care is reasonable under the statute is a question of fact.”
Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Claimant has suffered with carpal tunnel symptoms for an extended period of time. Defendant denied claimant's carpal tunnel symptoms were causally related to an alleged work injury of October 1, 2014 and/or October 19, 2015, based upon a report of Dr. Gorsche. After treatment of claimant's cervical condition failed to resolve his carpal tunnel complaints, his treating physician Dr. Reddy recommended bilateral carpal tunnel releases. Claimant requested authorization of the recommended treatment on April 11, 2016 and filed an alternate care petition requesting such care on April 25, 2016. In connection with the alternate care petition, defendant denied liability for the carpal tunnel condition. Defendant subsequently informed claimant treatment of carpal tunnel syndrome under an alleged injury date of April 4, 2016 was denied based in part upon the 2014 report of Dr. Gorsche.

It was only after the denial of liability that defendant arranged for further evaluation of claimant's complaints by Dr. Gorsche. On that date, May 18, 2016, Dr. Gorsche opined claimant's carpal tunnel condition was work related. Despite a request by claimant to reevaluate the denial, defendant did not agree to authorize treatment until June 13, 2016. In the interim, claimant sought treatment of his conditions with Dr. Lawler at UIHC. Dr. Lawler recommended and scheduled surgery.

Although the date of claimant's evaluation by Dr. Lawler is unclear, claimant was appropriate in his reliance upon defendant's denial of liability. Claimant initially requested care on April 11, 2016. Defendant denied liability without seeking further medical evaluation of claimant's complaints. Defendant knew of claimant's request for treatment and did not arrange for evaluation by Dr. Gorsche for over one month following the request. After Dr. Gorsche's report of May 18, 2016, defendant did not agree to accept liability until nearly one month later. It is determined defendant did not promptly offer reasonable medical treatment to claimant.

It is disingenuous for defendant to deny liability for a condition and then question claimant's choice to secure prompt treatment of his complaints. Defendant elected to deny liability prior to continuing its investigation. As a result, defendant bears the risk of claimant securing prompt medical treatment and establishing a physician-patient relationship with another provider. I find it unreasonable to require claimant to interrupt his established course of care with Dr. Lawler in order to revert his care to Dr. Gorsche, a physician in whom claimant lacks confidence due to Dr. Gorsche's prior care of claimant.

It is determined defendant failed to provide prompt treatment of claimant's now-admitted carpal tunnel syndrome and further determined that defendant's offer of treatment with Dr. Gorsche is unreasonable given defendant's prior denial of liability and claimant's poor physician-patient relationship with Dr. Gorsche.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's request for alternate care in the form of authorization of Dr. Lawler as a treating provider for claimant's bilateral carpal tunnel syndrome is granted.

Signed and filed this 28th day of June, 2016.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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