BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN BUTLER, Claimant, vs. CITY OF WATERLOO, Employer, Defendant. Insurance Carrier,	:	File No. 5054780 ALTERNATE MEDICAL CARE DECISION HEAD NOTE NO: 2701

FILED
AUG 04 2017
WORKERS' COMPENSATION

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 July 24, 2017. He alleged at paragraph 5 of his petition:

> Reason for dissatisfaction and relief sought: Defendant has refused to authorize a new treating physician after Dr. Chandan Reddy's departure from UIHC.

Defendants filed an answer on July 31, 2017. Defendants admitted the occurrence of a work injury on October 1, 2014 and/or October 19, 2015 and liability for the condition sought to be treated by this proceeding.

The alternative medical care claim came on for hearing on August 3, 2017. 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 exhibits 1 and 2, defendant's exhibits C through G, 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 a neurosurgeon to assume claimant's care after the departure of Dr. Reddy.

FINDINGS OF FACT

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

Claimant suffered a stipulated work-related injury to his neck with alternatively claimed dates of injury of October 1, 2014 and October 19, 2015. Defendant initially denied liability for claimant's neck injury, leading claimant to seek out care on his own. He ultimately received care from Chandan Reddy, M.D., of the University of Iowa Hospitals & Clinics (UIHC) Neurosurgery Department. Dr. Reddy's course of care included a C6-C7 fusion in January 2016. (Claimant's testimony)

Claimant returned to work and subsequently redeveloped pain of the neck and shoulder region. (Claimant's testimony) He returned to Dr. Reddy, who ultimately performed a C4-C6 fusion on January 26, 2017. Following this second fusion surgery, claimant returned to Dr. Reddy on March 28, 2017. At that time, Dr. Reddy expressed pleasure with claimant's progress and advised claimant to return as needed. (Ex. 1, p. 1) Dr. Reddy also released claimant to return to work without restrictions, effective May 8, 2017. (Ex. 1, p. 1; Ex. D) Claimant has not been seen by Dr. Reddy since March 28, 2017. (Claimant's testimony)

On May 8, 2017, claimant returned to work as a heavy equipment operator for defendant. Claimant testified after a short time, he developed pain of his shoulders, neck, and between his shoulder blades, similar to that with which he suffered prior to surgery. (Claimant's testimony)

As a result of the pain, claimant testified he telephoned the UIHC Neurosurgery Department to request nonnarcotic pain medication. (Claimant's testimony) On May 23, 2017, claimant spoke with Nahom Teferi, M.D., and requested a refill of his pain medication. Dr. Teferi advised claimant that since he was over 6-weeks post-surgery, he should seek medication refills through his primary care provider or at a local pain clinic. (Ex. E, p. 1; Ex. F)

Claimant testified he called his primary care provider to request pain medication, but was declined, as he testified his physician recommended pain clinic evaluation prior to issuing prescriptions. Claimant thereafter asked defendant to authorize evaluation with a pain specialist. (Claimant's testimony)

On June 16, 2017, claimant filed a petition for alternate medical care, seeking authorization of a consultation with a pain specialist.

In response to inquiry from defendant's counsel, on June 19, 2017, Dr. Reddy authored a statement indicating claimant did not require further treatment of his cervical spine. (Ex. 2, p. 3)

On June 23, 2017, claimant's counsel requested authorization of a repeat appointment with Dr. Reddy. (Ex. 2, p. 4) The same day, defendant's counsel responded and indicated claimant should feel free to contact Dr. Reddy to request an appointment. (Ex. 2, p. 5) Claimant thereafter voluntarily dismissed his pending petition for alternate medical care.

On July 11, 2017, claimant's counsel authored an email to defendant's counsel, informing counsel that claimant had attempted to schedule a repeat appointment with Dr. Reddy, only to be told that Dr. Reddy had left UIHC to practice in another state. Claimant's counsel indicated claimant had secured an appointment on August 25, 2017, with another surgeon in the department, Dr. Hiroto Kawasaki. Claimant's counsel inquired if this visit would be authorized by defendant. (Ex. 2, p. 6)

Defendant's counsel authored a response to claimant's counsel on July 13, 2017. By the letter, counsel indicated no further treatment was authorized with the UIHC Neurosurgical Department. In doing so, counsel referenced Dr. Reddy's opinion that no additional cervical treatment was necessary. (Ex. 2, p. 7)

On July 14, 2017, claimant's counsel authored a responsive letter to defendant's counsel. Counsel noted that on June 23, 2017, defendant had authorized claimant to seek another appointment with Dr. Reddy. Counsel indicated claimant attempted to schedule a return visit and was advised that Dr. Reddy had left the practice. As a result, claimant scheduled an appointment with his former colleague, Dr. Kawasaki. Counsel represented claimant continued to suffer with neck complaints and as his authorized neurosurgeon was no longer available, he requested authorization of care with Dr. Kawasaki or another neurosurgeon of defendant's choosing. (Ex. 2, p. 8)

On July 19, 2017, defendant's counsel authored a responsive letter to claimant's counsel. Counsel indicated that on June 19, 2017, Dr. Reddy opined claimant did not require additional treatment. Counsel further indicated that "[i]n light of that opinion, [defendant] will not authorize further care as it is not work related." (Ex. 2, p. 9)

Claimant requested designation of a new, authorized neurosurgeon to assume his care. Claimant testified he continues to have pain and he wants his complaints evaluated and treated. (Claimant's testimony)

Defendant maintains that while this is an admitted injury, further care is not medically necessary.

CONCLUSIONS OF LAW

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.

(1) 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).

"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).

(2) In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Claimant suffered an admitted injury to his cervical spine which has required two fusion procedures. The first took place in January 2016, consisting of fusion of the C6 and C7 levels. The second took place in January 2017, consisting of fusion of the levels of C4 through C6.

Claimant last saw his neurosurgeon, Dr. Reddy, on March 28, 2017. At that time, Dr. Reddy released claimant to return to work without restrictions on May 8, 2017. Claimant returned to work, but subsequently developed symptoms of his neck and shoulder regions. When claimant requested refills of pain medication from UIHC, he was advised to seek refills through his personal provider or in a pain clinic. Claimant requested defendant authorize a pain consultation, but was willing to return to Dr.

Reddy in lieu of such a consultation. Defendant then authorized claimant to return to Dr. Reddy. Claimant attempted to schedule an appointment with Dr. Reddy, only to learn Dr. Reddy was no longer affiliated with UIHC. Claimant then requested defendant designate a new authorized physician to provide care; defendant refused. Defendant relies upon Dr. Reddy's June 19, 2017 opinion indicating claimant did not require further cervical treatment.

Defendant's stubborn reliance upon Dr. Reddy's opinion is misplaced. At the time Dr. Reddy authored the opinion in question, he had not examined or spoken with claimant since March 28, 2017. Dr. Reddy was therefore unaware of any symptoms claimant developed following returning to work on May 8, 2017. There is no evidence Dr. Reddy was aware claimant had contacted the UIHC Neurosurgical Department and requested pain medication, to no avail. Therefore, Dr. Reddy's opinion that claimant does not require additional cervical treatment is based upon an incomplete history.

Additionally, I am somewhat incredulous that defendant maintains no additional evaluation of claimant's complaints is appropriate, given defendant authorized claimant to schedule a return appointment with Dr. Reddy. Defendant authorized this action on June 23, 2017, however, upon learning Dr. Reddy was no longer available for treatment, defendant then refused to authorize any additional treatment or evaluation.

There is no evidence claimant has achieved maximum medical improvement or been released from a physician's care. He remains only approximately six months post-multilevel cervical fusion. His authorized neurosurgeon left the area, leaving claimant without an authorized neurosurgeon to monitor claimant's progress or attend to any potential problems. Defendant has refused to authorize any physician to assume claimant's care.

I find defendants have failed to provide claimant with reasonable and necessary medical care. Upon returning to work in May 2017, claimant redeveloped symptoms of his neck and shoulder region. Despite multiple requests for some form of medical treatment or evaluation, defendant has declined to authorize medical evaluation or treatment. Defendant authorized claimant to return to Dr. Reddy, but offered no physician in his place upon learning of Dr. Reddy's departure. It is, quite simply, unreasonable to leave an individual who recently underwent a multilevel cervical fusion without an authorized medical provider. Claimant has behaved reasonably in his requests for care and seeks only that defendant designate an appropriately qualified physician to assume claimant's care.

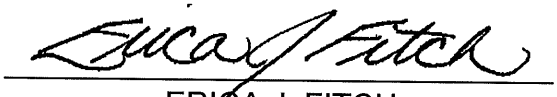
Defendant has failed to promptly provide claimant medical treatment reasonably suited to treat his injury. Defendant's offer of no care is certainly inferior to claimant's reasonable request for designation of a neurosurgeon to assume claimant's care. An award of alternate medical care is warranted.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is granted. Defendant shall, within ten (10) days, designate a neurosurgeon to assume claimant's care following Dr. Reddy's departure.

Signed and filed this 4th day of August, 2017.



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