BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HELEN GULLY, Claimant, vs. LIGURIA FOODS, INC., Employer, and EMPLOYERS PREFERRED INS. CO., Insurance Carrier, Defendants.	:	File No. 5063429.02 A R B I T R A T I O N D E C I S I O N Head Note No.: 2700

STATEMENT OF THE CASE

Helen Gully, claimant, filed a petition in arbitration seeking workers' compensation benefits from Liguria Foods, Inc. (Liguria) and its insurer, Employers Preferred Insurance Company as a result of an injury she sustained on November 20, 2015. In this proceeding claimant is requesting that defendants provide medical care and medical benefits pursuant to Iowa Code Chapter 85.

This case was heard in Des Moines, Iowa on January 21, 2020 and fully submitted January 22, 2020. By agreement of the parties, the claimant and her attorney participated in the hearing by telephone, and the defendants' attorney, the court reporter and undersigned were at the Division of Workers' Compensation's office in Des Moines.

The evidence in this case consists of the testimony of claimant and Joint Exhibits 1 through 3. Administrative notice was taken of the arbitration decision issued on April 5, 2019[1] in File No. 5063429. The parties waived filing of briefs.

PROCEDURAL HISTORY

A brief description of the procedural history of this case is warranted. Claimant filed a petition in arbitration against the defendants. That case was heard in September

[1] The arbitration decision is on appeal to the commissioner and is not a final agency decision as of the issuing of this decision.

2018 and was fully submitted on November 16, 2018. An arbitration decision was issued on April 5, 2019. The arbitration decision found claimant sustained an injury that arose out of and in the course of her employment with Liguria Foods, Inc. (Liguria) and was awarded healing period, permanent, and penalty benefits, as well as awarded certain medical care, medical and other costs. Defendants timely filed an appeal of the arbitration decision to the commissioner.

On September 18, 2019 claimant filed a petition for alternate care. The defendants filed an answer on October 9, 2019 denying liability, and the petition for alternate medical care was dismissed.

On October 9, 2019 claimant filed a petition in arbitration requesting medical benefits. Defendants filed an answer denying the request for medical care. The parties agreed to expedite the hearing of this claim, which was heard on January 21, 2020.

ISSUE

Whether claimant is entitled medical care.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

The arbitration decision of April 5, 2019 found claimant had an injury that arose out of and in the course of her employment with Liguria. The decision found that the November 20, 2015 injury caused a temporary and permanent disability and that claimant was entitled to medical care. Claimant requested at that hearing medical care for her depression, which was granted.

In this arbitration case for medical benefits, claimant's petition for arbitration alleged she had a work-related injury on November 20, 2015 at Liguria that injured her, "Left shoulder/left upper extremity/left hip/back." (Claimant's Petition, page 1, October 9, 2019) The defendants filed an answer and admitted claimant had an injury while working for Liguria on November 20, 2015 and that she injured her left shoulder/left upper extremity/left hip/back. (Defendants' Answer, page 1, October 30, 2019) The defendants denied the length of time claimant was entitled to disability, extent of disability and medical expenses under Iowa Code section 85.27. (Def. Answer, p. 1, October 30, 2019)

Helen Gully, claimant testified that since the hearing in 2018 she has not had any care for her left shoulder authorized by defendants. Claimant testified that she has pain in her left shoulder, back and left leg and wants treatment.

Claimant requested treatment for her symptoms from the defendants on May 6, 2019. (Joint Exhibit 2, p. 7) Claimant was examined by Alexander Pruitt, M.D. Dr. Pruitt performed shoulder surgery in 2016. This surgery was, "… [A] previous full

thickness rotator cuff tear, biceps tenotomy, partial excision of the labrum, distal clavicle excision, acromioplasty and mini open rotator cuff repair in September of 2016." (JE3, p. 8) Dr. Pruitt noted he had previously put claimant at maximum medical improvement (MMI) in February 2017. (JE 3, p. 8; Arb. Dec. p. 5) Dr. Pruitt's assessment and plan was,

> ASSESSMENT: Persistent pain in her shoulder, back and leg, she relates it to her original workman's comp injury. Temporarily related according to her.
>
> PLAN: We cannot argue against the fact that she still has persistent pain since we have taken care of, [sic] started 4 years ago and we released her 2 years ago. I explained to her again today that she will probably going [sic] to have this problem, will probably persist. We told her previously that after you have an injury she will have difficulty with achiness for at least a couple of years, especially with weather changes and she agrees with that.

(JE3, pp. 8, 9)

On August 13, 2019 Dr. Pruitt wrote to claimant's counsel. Dr. Pruitt noted claimant had persistent pain in her shoulders, back and leg that claimant related to her work injury. Dr. Pruitt stated that claimant would probably have persistent problems with achiness with weather changes and overdoing it with her shoulder. Dr. Pruitt said that claimant may respond to nonsteroidal anti-inflammatories, which she may need for the rest of her life. Dr. Pruitt had no further recommendations for further medical care. (JE3, p. 10) On September 6, 2019 Dr. Pruitt filled out a "check-box" answer to a question posed by the defendants. Dr. Pruitt agreed that claimant's current symptoms/complaints and need for medical treatment in relation to her shoulder and back was not medically related to her injury on November 20, 2015, but would relate to a natural progression of degenerative disease process/aging in her back. (JE3, p. 12)

Tom Hansen, M.D. performed an independent medical examination (IME) of claimant in July 2018. (JE1, pp. 1–5) In the arbitration decision issued in April 2019, the undersigned adopted the restrictions recommended by Dr. Hansen. On December 9, 2019 Dr. Hansen wrote a letter concerning claimant's medical condition. Dr. Hansen wrote,

> In the IME report, I opined that Ms. Gully's injuries and current symptoms were directly related to the injury she sustained 11/20/15 while at work. I maintain that he [sic] current symptoms of left shoulder pain and low back pain are directly related to her injury of 11/20/15 and have not changed my opinion stated in the IME evaluation of 7/28/18.

(JE1, p. 6)

I find the testimony of the claimant credible that she still has pain in her left shoulder, neck, low back and left leg. Claimant's testimony is consistent with the reports of Dr. Hansen and Dr. Pruitt. Relying upon the record submitted, administratively noticed evidence and testimony of the claimant, I find that claimant's current physical symptoms of left shoulder, low back and left leg pain are causally related to her work injury of November 20, 2015.

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).

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he 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.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); 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. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.

> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

The commissioner can order alternative medical care if the employee shows "that the medical care furnished by the employer is unreasonable." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); see also Iowa Code §85.27(4)

The defendants are currently declining to provide care to claimant for her left shoulder, low back and left leg. Defendants are not providing reasonable care. I found that claimant's symptoms for her left shoulder, low back and left leg are related to her work injury of November 20, 2015.

Defendants shall provide claimant with reasonable medical care for her work-related conditions.

ORDER

The defendants shall provide claimant medical care as set forth in this decision.

Signed and filed this 29th day of January, 2020.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nathan McConkey (via WCES)
Janece Valentine (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.