

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THOMAS LESTER,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	
FRENCH WAY CLEANERS,	:	File No. 5063864
	:	
Employer,	:	ALTERNATE MEDICAL
	:	
and	:	CARE DECISION
	:	
TRAVELERS INDEMNITY,	:	
	:	
Insurance Carrier,	:	HEAD NOTE NO: 2701
Defendants.	:	

FILED
MAY 14 2019
WORKERS COMPENSATION

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Thomas Lester. Claimant appeared personally and through attorney, Christopher Spaulding. Defendants appeared through their attorney, James Ballard.

The alternate medical care claim came on for hearing on May 14, 2019. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists claimant's exhibits 1 and 2 and defense exhibit, which were received without objection. Official notice was taken of the administrative file, including the prior alternate medical care petition and answer. The defendants do not dispute liability for claimant's March 12, 2018, left shoulder injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to return to the authorized treating physician.

FINDINGS OF FACT

The claimant sustained an injury to his left shoulder which arose out of and in the course of his employment on or about March 12, 2018. The defendants have provided and directed medical treatment for this injury although he received very little treatment prior to September 2018.

Following an alternate medical care petition filed in September 2018, medical care for the left shoulder was established with Steven Aviles, M.D., an orthopedic shoulder specialist. Dr. Aviles apparently provided some medical care, including an MRI of the shoulder and physical therapy. He released Mr. Lester on January 9, 2019 with no impairment or restrictions. (Claimant's Exhibit 2)

In March 2019, Brian Crites, M.D., evaluated the claimant. He took an appropriate history and reviewed medical records provided by claimant's counsel.

CURRENT SYMPTOMS: The patient currently complains of continued pain in the left shoulder with numbness and tingling into his left arm and hand. He points to the left thumb and index finger as the site of numbness and tingling.

(Cl. Ex. 1, Crites IME, p. 2)

Mr. Lester testified live and under oath at hearing. He testified that he recounted the symptoms of left shoulder pain with numbness and tingling into his left arm and hand to Dr. Aviles, as well as the physical therapist on multiple occasions. I find the claimant credible. The claimant feels his concerns were never addressed by Dr. Aviles. Regarding the left shoulder itself, Dr. Crites examined the left shoulder, which was found to have full normal range of motion, no tenderness, negative impingement signs, and full rotator cuff strength. (Cl. Ex. 1, Crites IME, p. 2) The examination of the cervical spine, however, revealed that "rotation and turning to the left causes radiating parasthesias into the C6 distribution." (Id.) Based upon this, Dr. Crites recommended further diagnostic testing, including a cervical MRI and EMG nerve conduction studies.

Claimant's counsel forwarded the IME report to defense counsel and demanded authorization of these tests on April 15, 2019. (Cl. Ex. 1, p. 1) Claimant filed for alternate medical care on April 30, 2019. On May 8, 2019, defense counsel authorized an examination with Lynn Nelson, M.D., a well-known orthopedic spine surgeon in Central Iowa. (Def. Ex. A) The appointment is scheduled for June 4, 2019. Very little is documented about the nature of this appointment. After evidence was closed, during closing arguments, claimant's counsel asked defense counsel if the appointment was a one-time evaluation or an authorization of treatment. Defense counsel stated that Dr. Nelson would be considered an authorized doctor. Defendants offered no additional evidence.

Viewing this expedited record as a whole, I find that the defendants are offering reasonable treatment to the claimant at this time for his left shoulder condition. In response to the IME of Dr. Crites, the defendants authorized an appointment with Dr. Nelson. It appears that, based upon the IME of Dr. Crites, the claimant's left shoulder, arm and hand pain may be related to a condition in his neck, rather than his actual left shoulder. Dr. Crites apparently recommended further diagnostic testing of the cervical spine to determine if this is the case. From what I can tell based upon the record herein, the defendants have not accepted responsibility for any neck condition. In any event, the defendants have arranged an appointment for the claimant to see Dr. Nelson, a well-qualified spine specialist and agreed to authorize treatment recommended by Dr. Nelson (assuming Dr. Nelson feels this condition is causally-connected to the work injury).

REASONING AND 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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

For the reasons set forth in the findings of fact, I find that the claimant has failed to prove by a preponderance of evidence that the defendants have failed to authorize reasonable care. I do find, however, that defendants are responsible for any treatment recommended by Dr. Nelson, which is causally-connected to the claimant's March 12, 2018, work injury.


ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DENIED.

Defendants are, however, required to provide treatment as recommended by Dr. Nelson, for any condition which is causally-connected to his March 12, 2018, work injury.

Signed and filed this 14th day of May, 2019.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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