

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GREGORY STRAHL,

Claimant,

vs.

CUPERTINO ELECTRIC,

Employer,

and

EXECUTIVE RISK INDEMNITY,

Insurance Carrier,
Defendants.

File No. 21003882.01

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

On April 29, 2021, Gregory Strahl filed an application for alternate care under Iowa Code section 85.27 and 876 IAC 4.48. The defendants, employer Cupertino Electric and insurance carrier Executive Risk Indemnity, did not file an answer. Instead, they responded to the petition on the record during the hearing under 876 IAC 4.48(12).

The undersigned presided over an alternate care hearing held by telephone and recorded on May 12, 2021. That recording constitutes the official record of the proceeding under Rule 876 IAC 4.48(12). Strahl participated personally and through attorney Joanie Grife. The defendants participated through attorney Jill Hamer Conway. The record consists of Exhibits 1 through 5.

ISSUE

The issue under consideration is whether Strahl is entitled to alternate care in the form of surgery recommended by authorized treating physician Stanley Bowling, M.D.

FINDINGS OF FACT

Strahl sustained a right-knee injury on November 21, 2020. (Ex. 1) The defendants provided care for Strahl's injury with Dr. Bowling, who opined, "It is my opinion that the prevailing factor for his ongoing right knee pain is the work-related injury from November 21, 2020." (Ex. 1) Dr. Bowling diagnosed a medial meniscus tear and

some early arthritis. (Ex. 1) On January 15, 2021, Dr. Bowling recommended surgery in the form of a right knee arthroscopy with partial medial meniscectomy. (Ex. 1)

The defendants did not authorize the surgery recommended by Dr. Bowling. At hearing, defense counsel characterized their rationale as wanting to further investigate the nature and extent of Strahl's injury because it appears it might be related to a preexisting condition. On March 15, 2021, the defendants sent Strahl notice of an independent medical examination at ExamWorks with Thomas Samuelson, M.D. (Ex. 2)

Strahl sought legal representation and hired Grife, who sent a letter to the defendants' third-party administrator Gallagher Bassett Services, dated March 18, 2021, informing them that Strahl would not be attending the examination at ExamWorks and requesting authorization for the surgery recommended by Dr. Bowling. (Ex. 3) In the letter, Grife cited a raft of agency decisions regarding care recommended by an authorized treating physician. (Ex. 3)

Grief and Gallagher Bassett exchanged emails. Ultimately, Strahl filed the petition concerning alternate care at issue in this contested case proceeding. Strahl seeks an order compelling the defendants to authorize the surgery recommended by Dr. Bowling.

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties can't reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. "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); Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Reynolds, 562 N.W.2d at 436; Long, 528 N.W.2d at 124. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's

dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

At hearing, the defendants did not dispute liability. Consequently, Iowa Code section 85.27(1) and 876 IAC 4.48(7) are not implicated. See, e.g., R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196–97 (Iowa 2003). However, the requirement under Iowa Code section 85.27(4) that care for a work injury “must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee” is implicated.

Dr. Bowling, the authorized treating physician chosen by the defendants, issued an opinion unambiguously stating Strahl’s injury arose out of and in the course of his employment with Cupertino Electric on November 21, 2020, and that surgery is appropriate. Based on the evidentiary record, there is no ambiguity of the type that might support further investigation. The delay, now approaching four months, in authorizing surgery with Dr. Bowling is therefore unreasonable. Consequently, Strahl has met his burden of proof. He is entitled to alternate care in the form of surgery with Dr. Bowling.


ORDER

Under the above findings of facts and conclusions of law, it is ordered:

- 1) Strahl’s application for alternate care is GRANTED.
- 2) The defendants shall promptly make arrangements with Dr. Bowling for Strahl to receive the recommended surgery and follow-up care as recommended by Dr. Bowling’s office.

On February 16, 2015, the Iowa workers’ compensation commissioner issued an order delegating authority to deputy workers’ compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in a district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

Signed and filed this 12th day of May, 2021.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS’
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joanie Grife (via WCES)

Jill Hamer Conway (via WCES)