

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSH MOTT,

Claimant,

vs.

MATT STOOKEY TRUCKING, INC.,

Employer,

and

PROTECTIVE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 20000061.01

ALTERNATE MEDICAL CARE

DECISION

Head Note No.: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Josh Mott.

This alternate medical care claim came on for hearing on April 23, 2021. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed 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 record in this case consists of Claimant's Exhibit 1- 4, Defendants' Exhibit A-C, and the testimony of claimant.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization of care for a second opinion with William Jacobson, M.D.

FINDINGS OF FACT

Defendants accept liability for a work-related injury to claimant's shoulder occurring on November 25, 2019.

On December 19, 2019 claimant was evaluated by Kary Schulte, M.D., for a November 25, 2019 date of injury. Dr. Schulte reviewed claimant's MRI. The MRI showed a full-thickness rotator cuff tear and a complete medial dislocation of the long head biceps tendon. A right rotator cuff repair was recommended and chosen as a treatment option. (Exhibit 4, page 1)

On January 29, 2020 claimant underwent a right shoulder rotator cuff repair. Surgery was performed by Dr. Schulte. (Ex. 4, pp. 2-3; Exhibit B, p. 3)

Claimant testified that following his first rotator cuff repair, he had problems with his right biceps. He said he repeatedly asked Dr. Schulte about the right biceps. He said Dr. Schulte indicated he wanted to see if the right biceps would heal over time.

Claimant testified he was released from care on August 3, 2020, and returned to work. He testified he did not have any medical care from that time until December 30, 2020, when he reinjured his right shoulder.

On December 30, 2020 claimant slipped while climbing on a truck at work and his right arm was pulled up. Claimant had immediate pain. (Ex. B, p.3)

On January 18, 2021 claimant was evaluated by Dr. Schulte. Claimant had reinjured his right shoulder on December 30, 2020, after slipping while climbing on his truck at work. Claimant was assessed as having a probable rotator cuff tear. An MRI was recommended. Claimant was given a five pound lifting restriction. There is no reference to a biceps condition in this record. (Ex. B, pp- 3-5)

Claimant returned to Dr. Schulte on February 11, 2021. An MRI showed a right rotator cuff tear. Surgery was discussed and chosen as a treatment option. There is no reference to a biceps condition in this record. (Ex. B, p. 2)

On February 23, 2021, claimant underwent a right rotator cuff repair. Surgery was performed by Dr. Schulte. (Ex. A)

Claimant returned to Dr. Schulte in follow-up on March 8, 2021. Claimant was prescribed physical therapy. He was also given light exercises consisting of pendulums and gentle passive internal and external rotation. Claimant was restricted from using his right arm. There is no reference to a biceps condition in this record. (Ex. B, p. 1)

On March 30, 2021, claimant was evaluated by Teresa Kolarik, ARNP. Nurse Practitioner Kolarik referred claimant for a second opinion based on his second shoulder surgery. There is no reference to a biceps condition in this record. (Exs. 1 and 2)

In an April 7, 2021 letter, claimant's counsel requested defendants authorize claimant to treat with Dr. Jacobson with Capital Orthopaedics. This was because

claimant lost his faith in his patient-physician relationship with Dr. Schulte. The letter indicates:

Mr. Mott has continued to express symptoms of significant pain in his **right shoulder**. However, Dr. Schulte has been continually dismissive of the concerns, and it is also Mr. Mott's understanding that not all of the tears/injuries involved with his **right shoulder** were repaired." (emphasis added) (Ex. 1)

Defendants denied claimant's request for a second opinion referral. (Ex. 2)

An April 21, 2021 note from Athletico Physical Therapy to Dr. Schulte indicated claimant had only attended two physical therapy sessions since his surgery on February 23, 2021. Claimant indicated difficulty with attending physical therapy consistently as he lacked transportation. Claimant had significant limitations in his range of motion based on where the physical therapist believed claimant needed to be. Notes indicate claimant would benefit with consistently attending physical therapy to improve range of motion and strength. (Ex. C)

Claimant testified he continues to have right biceps problems. He said he wants a second opinion to help deal with his right biceps problems. Claimant said he has lost trust in Dr. Schulte.

CONCLUSION 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. 6.904(3)(e).

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).

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 Rule of Appellate Procedure 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. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), 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.

Claimant testified he has had ongoing problems with his right biceps since his first surgery. He said he repeatedly asked Dr. Schulte about his right biceps but that Dr. Schulte ignored his concerns.

Other than claimant's testimony, there is little in the record indicating claimant had any problems with his right biceps following his first surgery. His first shoulder surgery was in January of 2020. Approximately a year and a half after that surgery, and following a second surgery, claimant requests alternate medical care regarding the first surgery. The referral from Nurse Practitioner Kolarik indicates claimant wants a second opinion regarding his second shoulder surgery, not the first surgery. There is no reference in the referral regarding a biceps problem. The letter from claimant's counsel indicates claimant wants a second opinion due to significant pain in the right shoulder. There is no reference to biceps pain or a biceps condition.

I appreciate claimant's position regarding wanting to have a second opinion regarding his biceps condition. However, there is little evidence in the record that Dr. Schulte's care and treatment of claimant is unreasonable. The referral made by Nurse Practitioner Kolarik indicates claimant wants a second opinion regarding his second shoulder surgery. The request for a second opinion from claimant's attorney indicates claimant's problems are in his shoulder, not his biceps. The record does indicate claimant has had difficulty with strength and range of motion following his second surgery. The record also indicates claimant has only had two physical therapy sessions since his February 23, 2021 surgery. Notes from the physical therapist indicate

claimant's problems with strength and range of motion could be improved with consistent physical therapy. Claimant has had difficulty getting to physical therapy due to issues with transportation. In short, claimant's problems with rehabilitation of his shoulder after his second surgery are due, in part, by a failure to consistently attend physical therapy.


Given the record as detailed above, it is found that defendants' offered care is not unreasonable. Claimant has failed to carry his burden of proof he is entitled to the requested alternate medical care.

ORDER

Therefore, it is ordered:

That claimant's petition for alternate medical care is denied.

Signed and filed this 23rd day of April, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Shaul (via WCES)

Matthew Grotnes (via WCES)