

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAREY SCHNEIDER,

Claimant,

vs.

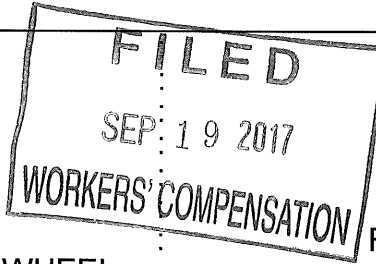
GKN ARMSTRONG RIM AND WHEEL,

Employer,

and

ZURICH AMERICA INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5058779

ALTERNATE MEDICAL

CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Carey Schneider sustained an injury to his right upper extremity working for the defendant, GKN Armstrong Rim and Wheel ("Armstrong Wheel"). Schneider reported the injury to his employer, and he received medical treatment from Dr. Jones, including right elbow surgery.

On May 8, 2017, Schneider filed a petition for alternate medical care against Armstrong Wheel, and its insurer, the defendant, Zurich America Insurance Company ("Zurich America"). A hearing was held before Deputy Workers' Compensation Commissioner Stan McElderry on May 18, 2017. Deputy McElderry found Dr. Jones, the treating physician, recommended a referral to either the Mayo Clinic, or to his practice partner Dr. Curd. Armstrong Wheel and Zurich America agreed to provide care with Dr. Curd. Deputy McElderry found Schneider failed to meet his burden of proving the care authorized with Dr. Curd was ineffective in treating his injury and denied the petition for alternate medical care.

Schneider received care from Dr. Curd. On September 7, 2017, Schneider filed a second application for alternate medical care, attaching Exhibits A through C. On September 8, 2017, the Division of Workers' Compensation filed a notice of telephone hearing, scheduling a hearing for September 19, 2017, at 8:30 a.m. A copy of the notice was mailed to the parties.

A telephone hearing was held on September 19, 2017. Attorney Mindi Vervaecke appeared with her client, Schneider. Schneider testified. Attorney Adam Bates appeared on behalf of Armstrong Wheel and Zurich America. Exhibit A through C were admitted into the record. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

Schneider sustained an injury to his right upper extremity while working for Armstrong Wheel. (Schneider Testimony) Schneider received medical care from Dr. Jones, the treating physician, including right elbow surgery. (Schneider Testimony) Schneider continued to experience symptoms and requested a referral from Dr. Jones for a second opinion. Dr. Jones referred Schneider for a second opinion with Dr. Curd, his practice partner, or to the Mayo Clinic.

On May 8, 2017, Schneider filed a petition for alternate medical care against Armstrong Wheel and Zurich America. Armstrong Wheel and Zurich America agreed to provide care with Dr. Curd. Following the hearing, Deputy McElderry found Schneider failed to meet his burden of proving the care authorized with Dr. Curd was ineffective in treating his injury and denied the petition for alternate medical care.

Schneider attended an appointment with Dr. Curd on August 9, 2017, with complaints of right upper extremity pain, elbow pain, and shoulder pain. (Exhibit B) Dr. Curd noted,

I do not have the explanation for his continued pain and soreness in the right upper extremity with the exception of his underlying elbow osteoarthritis. He again demonstrated the catching motions in his shoulder and elbow with activity and usage. I think the only potential long-term solution for him is a total elbow arthroplasty, although this would not return him to the vigorous level of work he was engaging in prior to the surgical intervention. I am also skeptical whether this would correct his catching symptoms in the right upper extremity. For his right shoulder, he does appear to have some AC joint arthrosis and mild subacromial impingement with intrasubstance cuff tear, but no detachment. He got no relief with our corticosteroid injection last time however. It may that a shoulder arthroplasty with an arthroscopic subacromial decompression and Mumford distal clavicular excision and addressing any potential cuff pathology would be helpful; however, the prognosis following such a procedure would be guarded as would be the prognosis following total elbow arthroplasty. For now, I recommend that he continue on his current

work and with the same limitations and that he follow up with us in six months. Mr. Schneider requested a referral to the Mayo Clinic. I told him that I did not have a question I needed the Mayo Clinic to answer, but we would facilitate with any records we could possibly provide and I suggested that he work on that request through his workers' compensation carrier.

(Ex. B)

Schneider requested a referral to the Mayo Clinic. Armstrong Wheel and Zurich America have refused his request.

Schneider testified during his appointment with Dr. Curd, Dr. Curd did not discuss or recommend surgery to him, and told him to return in six months. (Schneider Testimony) Dr. Curd's report notes that Schneider should follow his "limitations." (Ex. B) Schneider reported he does not have any work restrictions at this time. (Schneider Testimony) Schneider testified during his appointment with Dr. Curd, he asked for a referral to the Mayo Clinic and Dr. Curd pointed to Theresa Frank, the nurse case manager assigned to his claim, and told him she would get him the referral. (Schneider Testimony)

Schneider testified the range of motion in his shoulder is restricted and he has pain shooting down his hand and up his shoulder when he raises it. (Schneider Testimony) Schneider relayed he has no feeling in his fingers, and while he can tell his right hand is touching something, he cannot distinguish whether he is touching glass, or sandpaper. (Schneider Testimony) Schneider is taking three acetaminophen every three to four hours for pain, which dulls his pain, but does not relieve it. (Schneider Testimony) Schneider requests a referral to the Mayo Clinic because he wants his symptoms to improve. (Schneider Testimony) Schneider does not have an appointment scheduled with Drs. Jones or Curd at this time. (Schneider Testimony)

REASONING AND CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2015). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). "The employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

According to Schneider's testimony, Dr. Curd has not offered him any additional treatment at this time. (Schneider Testimony) Schneider requests a second opinion with the Mayo Clinic, which is also recommended by Dr. Jones, the treating physician. Armstrong Wheel and Zurich America are not providing care to Schneider and he remains symptomatic. Armstrong Wheel and Zurich America have not proposed any alternate care at this time. The evidence presented at hearing supports the care offered by the defendants is unreasonable, ineffective, and inferior. See Pirelli-Armstrong Tire Co., 562 N.W.2d at 437 (finding the care authorized by the employer was ineffective, inferior and less extensive than the care requested because the claimant's pain had increased and his leg had atrophied during the year he had been treated by the company-approved physician). Schneider's petition for alternate care should be granted. Armstrong Wheel and Zurich America shall authorize a second opinion with the Mayo Clinic.

ORDER

Claimant's petition for alternate care is GRANTED. Defendants shall authorize a second opinion with the Mayo Clinic.

Signed and filed this 19th day of September, 2017.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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