BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERALD LEACH,

Claimant,

vs.

REYES HOLDINGS, LLC,
d/b/a REINHART FOODSERVICE,

Employer,

and

SEDGWICK CLAIMS,

Insurance Carrier,
Defendants.



File No. 5066086

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

## 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, Gerald Leach. Claimant appeared personally and through attorney, Dennis Currell. Defendants appeared through their attorney, Courtney Ruwe.

It is noted that Sedgwick Claims Management Services was named as the insurance carrier in this case. Sedgwick is a claims management service and I find it unlikely that it is the true insurance carrier here. The defendants are ordered to file, with this agency, the name and address of the true insurance carrier within 30 days of this order.

The alternate medical care claim came on for hearing on September 27, 2018. 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 of claimant's exhibits 1 through 3 and defense exhibit A, which were offered and received without objection, in addition to the claimant's testimony. The defendants do not dispute liability for claimant's June 30, 2017, left knee injury.

## ISSUE

The issue presented for resolution is whether the defendants have abandoned medical care.

## FINDINGS OF FACT

The claimant, Gerald Leach, sustained an injury to his left knee on June 30, 2017, which arose out of and in the course of his employment. Mr. Leach is a 49 year old man who worked for Reinhart Foodservice delivering groceries. Defendants accepted this injury and authorized medical treatment. Treatment was authorized with Daniel Fabiano, M.D., of Physicians Clinic of Iowa, after the initial injury. Dr. Fabiano provided treatment, including an MRI and a steroid injection in August 2017. Mr. Leach testified that the injection was helpful for a period of time and he was able to return to work without much difficulty for several months. This is consistent with the treatment records. (Claimant's Exhibit 2, page 1)

In March 2018, the left knee pain returned. He was evaluated at Cedar Rapids Pain Associates, who became the authorized treatment provider at that time. (Cl. Exs. 1 and 3) Mr. Leach was provided a prescription for Nabumetone, as well as a knee brace and physical therapy. (Cl. Ex. 2, p. 3) The nurse practitioner also recommended "left knee joint steroid injection to help with inflammation and pain, as it has in the past." (Cl. Ex. 2, p. 3) The injection was performed on March 9, 2018. (Cl. Ex. 2, p. 4) Mr. Leach testified it did not help as it had previously.

Mr. Leach did not attend a scheduled physical therapy appointment on March 12, 2018. (Cl. Ex. 1, p. 2) He testified that he attended a physical therapy appointment with a different provider at a different time. I find his testimony credible. On March 26, 2018, the nurse practitioner documented significant ongoing pain in claimant's left knee. She noted that the brace was helping and he had missed one of the therapy appointments (but he rescheduled). (Cl. Ex. 2, p. 5) She apparently recommended a series of injections called "Supartz" injections to be performed starting April 12, 2016, and recurring each week through May 10, 2018. (Cl. Ex. 1, p. 2) Prior to the first injection, Cedar Rapids Pain Associates contacted him and informed him that the appointment was cancelled because Sedgwick had denied it. He later received a letter denying that specific treatment. Mr. Leach testified that he was not offered any other treatment in this letter.

On April 6, 2018, Venkata Lakkimsetty, M.D., prepared a report on behalf of the defendants reviewing the treatment recommended by Cedar Rapids Pain Associates, specifically, the series of Supartz injections. Dr. Lakkimsetty never evaluated Mr. Leach, but rather reviewed the treatment notes at the request of the employer. (Def. Ex. A, p. 1) He concluded that the injections were not medically necessary.

> In consideration of non-compliance of the claimant with physical therapy, use of injection therapy would, at best provide short term pain relief. This type of

> symptom management does not provide a long-term solution to the claimant's chronic pain condition, is invasive, and is costly due to need for repeated treatments indefinitely. Finally, it is not supported by clinical guidelines as there is no evidence that viscosupplementation is superior to glucocorticosteroid injections.

(Def. Ex. A, pp. 1-2)

Following this internal review, Sedgwick denied the injections and, the appointment was cancelled. Sedgwick apparently sent a letter to the claimant which is not in evidence. Mr. Leach testified that the denial letter offered him no other treatment options. Mr. Leach has not received any medical care at all since the denial.

Mr. Leach was terminated from employment on or about August 29, 2018, for reasons which are not in the record.

## 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). Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

An employer ordinarily has the right to control the care provided to the employee. Iowa Code section 85.27(4). In Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003), the Supreme Court allowed that the employer can lose this right in two circumstances:

> The commissioner has interpreted this section to mean that,
>
> In Iowa, an employer and its insurer have the right to control the medical care claimant receives, with two exceptions. The first is where the employer has denied liability for the injury. The second is where claimant has sought and received authorization from this agency for alternative medical care.

Trade Professionals, Inc. v. Shriver, 661 N.W.2d at 124 (quoting Freels v. Archer Daniels Midland Co., #1151214 (July 30, 2000)). Once an abandonment of care has occurred, the claimant is free to seek care on his own at defendant's cost. See West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999) (the court upheld the holding that the defendant employer had "lost the right to choose the care" and that "allow and order other care" language is broad enough to include treatment by a doctor of the employee's choosing).

Workers' compensation statutes are to be liberally construed in favor of the worker and the worker's dependents. Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503 (Iowa 1981); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 192 (Iowa 1980). The statute's beneficent purpose is not to be defeated by reading something into the statute that is not there. Cedar Rapids Community School v. Cady, 278 N.W.2d 298 (Iowa 1979).

Speaking on behalf of the Iowa Supreme Court, Justice Lavorato stated the following in regard to interpreting the Iowa Workers' Compensation law:

> Our review of this unusual case is controlled by the principles set forth in Iowa Code sections 4.1(2), 4.2, 4.4, 4.6, and 17A.19(8), which we have applied to the workers' compensation act. Foremost is that which acknowledges the act is to be liberally construed in the employee's favor.Cf. Doerfer Division of CCA v. Nicol, 407 N.W.2d 428, 434 (Iowa 1984). *Any doubt in its construction is thus resolved in favor of the employee.* Usgaard v. Silver Crest Golf Club, 256 Iowa 453, 459, 127 N.W.2d 636, 639 (1964).

Teel v. McCord, 395 N.W.2d 405, 406-07 (Iowa 1986) (*emphasis added*).

> The fundamental reason for the enactment of [the workers' compensation act] is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act.
>
> 'It was the purpose of the legislature to create a tribunal to do rough justice — speedy, summary, informal, untechnical. With this scheme of the legislature we must not interfere; for, if we trench in the slightest degree upon the prerogatives of the commission, one encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality.'

Zomer v. West River Farms, Inc., 666 N.W.2d 130, 133 (Iowa 2003) (quoting Flint v. City of Eldon, 191 Iowa 845, 847, 183 N.W. 344, 345 (1921)).

The very foundation of the workers' compensation system in Iowa relies upon the self-effectuating nature of the system wherein employers and insurers investigate claims reasonably and promptly pay appropriate benefits to injured employees when the claim is supported. Montgomery v. John Deere Davenport Works, File No. 5035802 (Appeal, August 15, 2013).

Iowa Code section 85.27(4) places an affirmative burden upon an employer to provide notice to a claimant when switching the medical care. "Once the employer chooses the care, the employer shall hold the employee harmless for the cost of the care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization." Iowa Code section 85.27(4) (2017).

The defendants authorized Cedar Rapids Pain Associates to treat Mr. Leach's left knee condition. It is not entirely clear exactly how this came to be, however, the claimant proved undoubtedly that the employer ultimately retained and authorized Cedar Rapids Pain Associates to provide treatment for Mr. Leach in March 2018. (See Cl. Exs. 1 and 3; see also claimant's testimony) Under Iowa law, once an employer directs medical care in such a way, it is not free to second guess its own care even through the use of another qualified medical provider.

What I find perplexing about this case is that approximately one month after the defendants authorized Cedar Rapids Pain Associates, it had the recommendations of the clinic reviewed in an internal "utilization review" process to determine the necessity of the care recommended. To use a sports analogy, it would be like hiring a new head coach for the football team and then hiring a "shadow" coaching expert a month later to second guess the decisions of the coach just hired.

Based upon the record before me, however, this appears to be exactly what happened. I find the use of such a "utilization review" process, under the facts presented, to be an unreasonable interference with the claimant's rights under Section 85.27. The claimant has a right to receive competent medical care reasonably suited to treat his injury, without undue delay or inconvenience.

In closing statement, defense counsel asserted that the employer has a right to review the recommendations of a treating physician by another doctor. I generally agree with this. The question is, from a legal standpoint, whether the employer has a legal right to use an internal utilization review process to deny care recommended by its own authorized treating physician. The answer is, at least generally, no. While the employer certainly has a right to use an internal review process, the employer does not have a right to use the review to deny treatment recommended by its chosen provider. It could be reasonable, however, to use an internal review process for the purpose of a second opinion to actually provide better treatment for the injured worker. In other words, the appropriate use of an internal review would be to have a second opinion physician render medical opinions which could then be reviewed by the treating provider. The reason for this is very simple and it is illustrated, better than any example, in this case.

The internal review physician, Dr. Lakkimsetty offered what I deem to be, some reasonable medical arguments regarding why the injections recommended by Cedar Rapids Pain Associates should not be undertaken. Dr. Lakkimsetty pointed out that the claimant's knee pain is "chronic," and therefore, the shots will likely only work on a temporary basis if they work at all; and further, that claimant missed a physical therapy appointment.[1] Dr. Lakkimsetty also pointed out that this specific type of injection (Supartz) is not supported by clinical guidelines for injured people who have moderate to severe osteoarthritis (which claimant has). It was also observed that the injections are expensive and possibly indefinite. Dr. Lakkimsetty, however, has never seen the claimant. All or some of these points may have a degree of validity. Or there may be a very good reason that the authorized treating medical provider already considered these concerns and sought to proceed with the treatment in any event. Had Dr. Lakkimsetty or the defendants communicated these concerns to the clinic and opened up a dialog, we would know the answer to these questions. This could have actually resulted in better treatment for Mr. Leach. The medical experts, working together, may have developed an alternative treatment plan taking into consideration the concerns of Dr.

[1] It is noted that the defendants main line of cross-examination focused upon the claimant missing one, or perhaps two, physical therapy appointments. I find the claimant's explanation regarding this to be quite reasonable. He testified that he missed one appointment and ended up arranging his therapy, for some reason, with a different provider. The claimant further testified that the second scheduled appointment was missed because he assumed it was denied after he received the phone call from the clinic denying his injection. Cedar Rapids Pain Associates was plainly aware that he had missed one appointment and it did not appear to concern them the same way it concerned Dr. Lakkimsetty. (Cl. Ex. 2, p. 5) The providers at Cedar Rapids Pain Associates were clearly in a better position to determine whether Mr. Leach is an individual who is habitually noncompliant with therapy or other treatment recommendations.

Lakkimsetty. Instead of developing a dialog about the proper treatment regimen for this injured worker, however, the defendants received the internal utilization review report and simply denied the injections. At that point, treatment ceased altogether.

This is the most concerning aspect of this case. Once the defendants denied the injections from the authorized treating provider, they did not offer any other treatment at all. As set forth above, the employer has an affirmative duty to provide direction as it relates to the medical care. Based upon the record before me, it appears that the treatment recommendations from Cedar Rapids Pain Associates were a package of treatment options which was to be attempted in conjunction with one another. In other words, claimant was supposed to have physical therapy and medications and Supartz injections in an effort to manage his very high pain levels.

The clinic called Mr. Leach a few days before the first scheduled Supartz injection and informed him it was not authorized. The employer did not designate a different physician or authorize different care. There is no evidence in this record that the employer even informed claimant he was authorized to continue with physical therapy or medication management. The employer took no action at all to ensure that the claimant would receive care reasonably suited to treat his condition without undue inconvenience. As a result, instead of receiving all of the treatment in conjunction, giving him the best opportunity for pain relief, the claimant has received no treatment whatsoever since April 2018. This is a direct result of the employer's improper interference with his treatment.

As a result, I find that the defendants have abandoned medical care. The appropriate remedy is that the claimant must be authorized to reasonably direct his own medical care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. The claimant shall reasonably direct his own medical care and defendants shall be responsible for all reasonable charges.

FURTHER within thirty (30) days defendants shall file the identity of the correct insurance carrier with this agency.

Signed and filed this 28th day of September, 2018.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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