

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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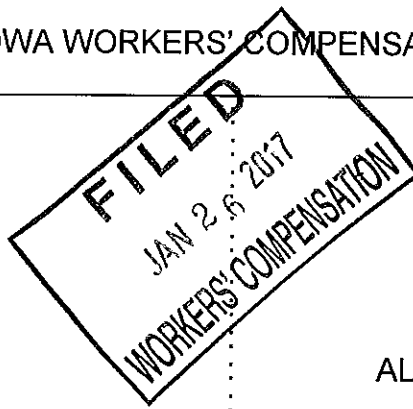
MARK BOONE,  
Claimant,

vs.

WORKSOURCE, INC.,  
Employer,

and

COMMERCE & INDUSTRY INS. CO.,  
Insurance Carrier,  
Defendants.



File No. 5063008

ALTERNATE MEDICAL CARE  
DECISION

Head Note. 2701

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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, Mark Boone.

The alternate medical care claim came on for hearing on January 26, 2017. The proceedings were digitally recorded, which constitutes the official record of this proceeding. By order filed February 16, 2015, this ruling is designated final agency action.

The record consists of claimant's exhibits 1-4; defendants' exhibits A-B. Claimant alleges an injury of January 23, 2016. During the course of hearing, defendants admitted the occurrence of a work injury on January 23, 2016.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Mark Boone sustained an injury arising out of and in the course of his employment with WorkSource Staffing on January 23, 2016. Mr. Boone underwent conservative treatment for his knee injury but even after one year since the injury he has not improved. (Ex. 1)

Defendants authorized Mr. Boone to see Wesley Smidt, M.D. at Des Moines Orthopaedic Surgeons. Mr. Boone saw Dr. Smidt on November 28, 2016. Mr. Boone took his medical treatment records and his x-rays and MRI to Dr. Smidt's office. Dr. Smidt reviewed the records. Dr. Smidt examined Mr. Boone's left knee. Dr. Smidt diagnosed claimant with work-related left patellar tendonitis. (Exhibit 1) Dr. Smidt recommended a knee arthroscopy which was scheduled for December 28, 2016. (Ex. 2) Defendants have not authorized surgery. On January 4, 2017, claimant expressed his dissatisfaction that the surgery was not authorized. (Testimony; Ex. 3) Claimant is seeking authorization of the surgery recommended by authorized treating doctor, Dr. Smidt.

On December 8, 2016, defendants requested a telephone conference with Dr. Smidt's office to discuss the proposed surgical procedure. In response to this request, Dr. Smidt's note states that all the information regarding Mr. Boone is outlined in his November 28, 2016 note. Dr. Smidt indicated that if the carrier does not wish to authorize the surgery he is happy to have them send Mr. Boone for another opinion. (Ex. A, p. 1)

On December 7, 2016, CompPartners issued a physician review recommendation. The report was signed by Laura M. Bruse, M.D. an orthopaedic surgeon. Based on the report, it is not clear where Dr. Bruse is located. She is licensed in several states, but not in Iowa. Dr. Bruse has not examined nor interviewed Mr. Boone. The report is based on a records review. Although Mr. Boone has undergone an MRI, Dr. Bruse's record review did not include the official report of the MRI. Dr. Bruse recommended denial of the surgery recommended by the authorized treating surgeon.

Mr. Boone testified that defendants arranged for him to have a second opinion with Scott Neff, D.O. Mr. Boone attended the appointment that defendants scheduled for him on Tuesday, January 24, 2017. Neither party has received a report as a result of the appointment that took place two days ago. However, Mr. Boone testified that he provided his medical records, including x-rays and the MRI, to Dr. Neff. In addition to reviewing his medical records Dr. Neff also examined Mr. Boone's left knee. It is Mr. Boone's understanding that Dr. Neff recommends that he return to Dr. Smidt and undergo the surgery as soon as possible.

At this point, the evidence demonstrates that defendants are offering no care. Defendants have sent claimant to be examined by two physicians, Dr. Smidt and Dr. Neff. The evidence demonstrates that both of these medical experts recommend that Mr. Boone undergo the left knee surgery. Mr. Boone has testified that he wants to undergo the surgery. I find that the surgery recommended by Dr. Smidt is reasonable and necessary as a result of the accepted January 23, 2016 left knee injury. I further find that the care offered by the defendants is inferior and less extensive than the care requested by Mr. Boone.

### REASONING AND CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he 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.

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 R. App. P. 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., 562 N.W.2d at 433, 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.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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 Decision June 17, 1986).

As noted above, I conclude that the recommended surgery is reasonable and necessary as a result of the January 23, 2016, work injury. I conclude that claimant has carried his burden of proof to show that the care offered by defendants is not reasonable and is inferior and less extensive than the care sought by Mr. Boone.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Defendants shall promptly provide the left knee surgery recommended by his authorized treating physician, Dr. Smidt.

Signed and filed this 26<sup>th</sup> day of January, 2017.



ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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