BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAN LAURIE,

Claimant,

vs.

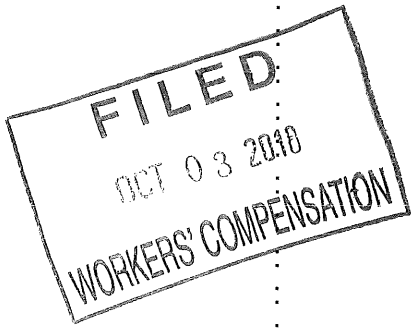
AGRILAND FS,

Employer,

and

EMC INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5061458

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, Dan Laurie. Claimant appeared personally and through his attorney, David Drake. Defendants appeared through their attorney, Kent Smith.

The alternate medical care claim came on for hearing on October 2, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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.

Claimant was the only witness to testify at the hearing. Claimant offered exhibit 1 which consists of 10 pages. Defendants offered exhibits A and B which consist of 8 pages. There were no objections to any of the exhibits; the exhibits were admitted into evidence. During the course of the hearing defendants accepted liability for the right knee and injury date of December 5, 2012.

ISSUE

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

FINDINGS OF FACT

Claimant, Dan Laurie, sustained a work-related injury to his right knee. Defendants authorized treatment for the injury. Mr. Laurie has undergone extensive treatment, including physical therapy, medications, injections, diagnostic exams, and surgeries. The treatment to date has been authorized and provided by the defendants. (Defendants' Exhibit A)

The last authorized treating physician Mr. Laurie had was Dr. Smidt at DMOS. Mr. Laurie testified that the last time he saw Dr. Smidt the doctor told him he had nothing else to offer him. Claimant then filed a petition for alternate medical care on June 27, 2018. The matter was scheduled for a hearing to be held on July 10, 2018. Claimant requested to be seen by a new orthopaedic surgeon for a fresh set of eyes. Defendants indicated that they were attempting to find an orthopedic surgeon who was willing to see and treat the claimant. Defendants had contacted at least four different orthopaedic surgeons to see if they would be willing to provide treatment to Mr. Laurie; they all declined. As a result of that first alternate care hearing a consent order was issued by the undersigned reflecting an agreement reached by the parties. The agreement the parties reached which is set forth in the consent order was, "[c]laimant is in agreement to allow defendants to have two more weeks to try and locate a qualified orthopaedic surgeon to treat the claimant. Claimant is also in agreement that the qualified orthopaedic surgeon could be farther away then *[sic]* what is typically allowed by this agency." (Consent Order, p.1)

Mr. Laurie continues to experience problems with his left knee. He has pain around his knee, his knee gives out to the right, and his knee causes him discomfort when he sleeps. His lower leg is bruised, hard, hot, and sensitive. (Testimony)

Since the last alternate care hearing defendants sent Mr. Laurie to see Bryan Warme, M.D. at the McFarland Clinic in Ames. On July 11, 2018, defendants wrote to Dr. Warme requesting Dr. Warme "be seen at your office for a second opinion." (Def. Ex. A, p. 1) Mr. Laurie saw Dr. Warme on August 2, 2018. When Mr. Laurie went to see Dr. Warme, the doctor told him he did not think he had authority to provide treatment; he was to provide opinions. (Testimony; Claimant's Ex. 1) This is not consistent with the terms of the consent order. The defendants agreed to find a treating orthopaedic physician, not obtain a second opinion, as clearly requested on page one of defendants' letter to the doctor. (Ex. A, p. 1) I find that Mr. Laurie's testimony at hearing and the conversation claimant had with the doctor and nurse case manager also demonstrate that it was not Dr. Warme's understanding that he had authority to treat Mr. Laurie. I find that defendants failed to comply with the terms of the consent

order and have not offered reasonable care. I further find that failing to comply with the prior consent order is not reasonable.

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).

Based on the above findings of fact, I conclude that defendants have failed to comply with the prior consent order and have failed to authorize a qualified orthopaedic surgeon to treat the claimant. Sending Mr. Laurie for a second opinion is not providing reasonable treatment. Claimant's petition for alternate care is granted. Defendants shall work diligently to promptly authorize a qualified orthopaedic surgeon to treat the claimant. Given the difficulty defendants have had locating an orthopaedic surgeon willing to see Mr. Laurie it may be necessary for him to travel farther than is customarily allowed by this agency.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted.

Defendants shall authorize an orthopaedic surgeon to provide treatment to the claimant. Prior to the time of the appointment, the defendants shall provide the doctor with authorization to provide treatment to the claimant for the work-related injury.

Signed and filed this 3rd day of October, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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