

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN HEEREN,

Claimant,

vs.

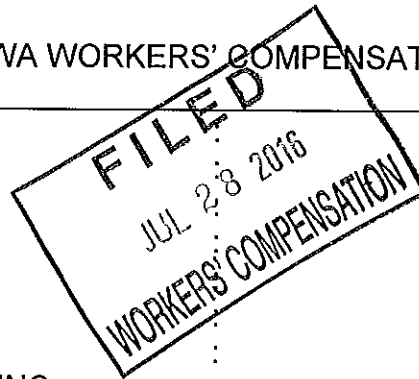
WILLOW VALLEY PORK, INC.,

Employer,

and

IMT INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5044263

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, John Heeren. Claimant appeared personally and through his attorney, Mary Hamilton. Defendants appeared through their attorney, Deena Townley.

The alternate medical care claim came on for hearing on July 28, 2016. 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 the sworn testimony of John Heeren and claimant's exhibits 1 through 3. Administrative notice was taken of the administrative file.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks a set of prosthetic devices which were recommended in November 2015.

FINDINGS OF FACT

The claimant lost a substantial portion of his left hand in an industrial accident while working for the defendant employer. A photograph of the condition of his hand is in evidence. (See Claimant's Exhibit 2) The claimant testified that the photo accurately depicts the current condition of his left hand.

The injury occurred four years ago in July 2012. In August 2015, Deputy Ron Pohlman entered an arbitration decision in favor of the claimant and defendants were ordered to provide medical treatment. (Arbitration Decision, page 8, August 25, 2015)

In November 2015, claimant was evaluated for a potential prosthesis at the Hanger Clinic. The following is documented by Jeff Boonstra, CP.

An evaluation was performed at our Patient Care Center in Dakota Dunes, SD on Wednesday November 18, 2015. Mr. Heeren has a partial left hand upper limb absence secondary to an accident on his work site. These devices are prescribed by the physician because Mr. Heeren has lost all function in the remaining hand. The prescribed devices will help him regain function in the extremity and will assist him in his abilities to do tasks around his home or work.

(Cl. Ex. 1, p. 1) Mr. Boonstra performed a full examination to determine claimant's prosthetic needs.

Mr. Boonstra prepared a report dated April 28, 2016. "The purpose of this letter is to detail a plan for prosthetic treatment and to gain authorization for its implementation." (Cl. Ex. 1, p. 1) The report details the claimant's need for a set of prosthetic devices in order to be able to function at a reasonable level in his life.

The claimant testified at hearing. He was very straightforward. I find his testimony to be honest and reliable. He testified he has had substantial difficulty obtaining employment. He believes he has been unable to secure employment in significant part because of the appearance of his hand. I believe him.

The employer offered no evidence at hearing. Counsel provided a professional statement that the defendants intend to have the report of Mr. Boonstra evaluated by a physician to determine the necessity of the recommendations of Hanger Clinic. The defendants are not denying the prosthetic device per se; however, they desire to have it reviewed by a physician for its necessity.

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).

For injuries which arise out of and in the course of employment, the employer must provide medical care, including "reasonable and necessary crutches, artificial members and appliances . . ." Iowa Code section 85.27(1) (2015). The Supreme Court has interpreted this statute quite broadly. Stone Container Corp. v. Castle, 657 N.W.2d 485 (Iowa 2003).

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*).

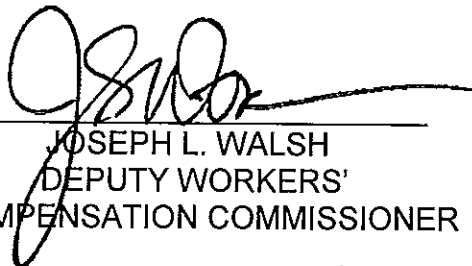
In this case, the claimant's treatment has been unreasonably delayed. The treatment recommendation was first ordered in November 2015. It was reduced to a simple report in April 2016. The defendants have had ample time to seek determination regarding the necessity of the recommendations of the Hanger Clinic. The treatment recommendations have been unreasonably delayed.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. The treatment recommendations set forth in Claimant's Exhibit 1 are hereby authorized. Defendants shall promptly pay all bills associated with such treatment.

Signed and filed this 28th day of July, 2016.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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