

to walk on his heels and toes slowly. Id. He was tender in the paraspinous muscles in the lower lumbar region. Id. His straight leg test was painful on the left but negative on the right. Id. He exhibited reduced range of motion. Id.

Dr. Kreiter reviewed the medical records and concluded that claimant suffers from chronic lumbar pain with facet changes at L4-5 with disc degeneration and bulge, marked muscle spasms with intermittent left sciatica as well as post-traumatic anxiety and/or depression secondary to the injury and perhaps a pre-existing psychopathology. (CE 1:2) Dr. Kreiter recommended a focal bone scan, EMG/NGV, a complete physical examination with lab work through an Internal Medicine physician, and an evaluation to address insomnia/anxiety/depression. He agreed with Dr. Hitchon that no surgery or epidural steroid injections were advised. (CE 1:2)

Defendants authorized an EMG test, which revealed no evidence of peripheral neuropathy or lumbar radiculopathy in the bilateral lower extremities. (Ex B) Fred J. Dery, M.D., opined that a CT scan of the lumbar spine was not reasonable or necessary. The claimant had numerous MRI imaging studies of the lumbar spine without any findings of significant abnormalities. Further, the claimant had an extensive work up including imaging and EMG studies and no abnormalities have been found to suggest any underlying pathology to explain the symptoms. (Ex C) Dr. Dery found claimant to be at MMI on August 20, 2020, following extensive conservative treatment which did not result in alleviation of claimant's pain. (Ex D) Dr. Dery did not believe that further treatment would be a benefit to the claimant.

Claimant has been returned to work without restrictions but is not working his pre injury position. Currently, claimant experiences significant low back pain, which is debilitating. He has pain while standing, sitting, and all activities such as bending or lifting. He testified that his life is miserable and believes that there is something that has been missed in the diagnosis and treatment of his back. At home, all he can do is wash dishes.

Claimant is dissatisfied with the care that is being provided because he has not seen improvement in his low back condition since his work injury. Claimant does not want to return to Dr. Dery given that Dr. Dery does not support a CT scan and that Dr. Dery has returned claimant to work. Claimant is in pain and believes that there is some diagnostic test that can identify the source of his pain.

CONCLUSIONS OF LAW

As claimant is seeking relief in this case, claimant bears the burden of proof to show by a preponderance of the evidence that the offered medical treatment is not reasonably suited to treat the injury without undue inconvenience to the employee. There are no medical records see Lawyer and Higgs, Iowa Practice, Workers' Compensation, §15-4 and cases cited therein.

The question of reasonable care is a question of fact. An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical care. The employee has the burden of proving that the care chosen by the employer is unreasonable. Unreasonableness can be established by showing 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. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Long v. Roberts Dairy Co., 528 N.W. 2d 122 (Iowa 1955). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is “inferior or less extensive” than other available care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997).

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, Declaratory Ruling, File No. 866389 (May 18, 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).

Right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. Employer must provide the treatment, testing, imaging or other treatment modalities recommended by its own authorized treating physician, even if another consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002) [MRI and x-rays]; Cahill v. S & H Fabricating & Engineering, Alt Care Decision, File No. 1138063, May 30, 1997 (work hardening program); Hawxby v. Hallett Materials, File No. 1112821, Alt Care Decision February 20, 1996. Leitzen v. Collis, Inc. File No. 1084677, Alt Care Decision September 9, 1996. The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v Cargill, Inc. File No. 1050396, Alt Care Decision January 31, 1994.

Claimant is being offered pain management care but believes that this care is inferior to a CT scan of his low back. Claimant has had multiple tests performed in the past including two lumbar MRIs and an EMG study. The lumbar MRIs showed disc degeneration but no condition requiring surgical treatment or epidural shots. The EMG study was normal.

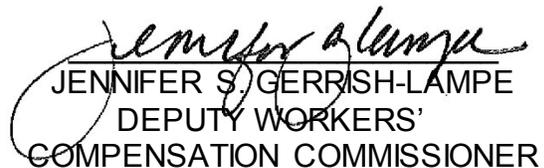
Dr. Kreiter’s suggestions of a CT scan and therapy to address a possible psychosomatic issue are reasonable. The current level of care provided to claimant is less extensive than that requested and recommended by Dr. Kreiter, a medical professional. While Dr. Dery’s opinion is not without merit, the greater weight of the

evidence supports a finding that the current level of care is not reasonable and claimant is entitled to a CT scan and an evaluation of his possible psychosomatic condition.

As for the breakdown of relationship between claimant and Dr. Dery, that the claimant is not happy with Dr. Dery's opinions does not provide sufficient basis upon which to remove claimant from Dr. Dery's care nor does it give rise to an abandonment of care. Defendants have provided additional testing when requested and continues to provide pain management care. Defendants are entitled to continue to direct care by selecting the providers.

THEREFORE IT IS ORDERED, claimant's petition is granted to the extent that he is requesting a CT scan and psychological examination. Defendants retain the right to direct the case.

Signed and filed this 29th day of March, 2021.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Leddin (via WCES)

Lindsey Mills (via WCES)