

According to the Iowa Workers' Compensation Commissioner, the deputy workers' compensation commissioner presiding at the contested case in an application for alternate medical care, pursuant to rule 876 IAC 4.48, is hereby delegated the authority to issue the final agency decision on the application, Iowa Code section 86.3. There is no right of intra-agency appeal on this decision. Continental Telephone Co. v. Colton, 348 N.W.2d 623 (Iowa 1984) and LeaseAmerica Corp. v. Iowa Dept. of Revenue, 333 N.W.2d 847 (Iowa 1983).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the 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.

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 Company, 528 N.W.2d 122 (Iowa 1995).

Under the statute on alternate medical care, the employer is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997). The question of reasonable care is a question of fact.

Claimant has the burden to prove the care offered is unreasonable. Long, 528 N.W.2d 122, 123.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assman v. Blue Star Foods, declaratory ruling, File No. 866389 (May 19, 1988).

The employer is not entitled to interpose its judgment in contravention of the recommendation of the authorized treating physician. The employer's failure to follow recommendations of an authorized physician is a failure to provide reasonable treatment pursuant to Iowa Code section 85.27. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care Dec. January 31, 1994).

When evidence is presented to the commissioner that the employer authorized medical care has not been effective and that such care is "inferior or less extensive" than other available care requested by the employee, the commissioner is justified by section 85.27 to order alternate care. Pirelli-Armstrong, at 437.

The issues to determine are whether defendants have provided reasonable medical care, and if not, whether claimant is entitled to alternate medical care under Iowa Code section 85.27.

On February 14, 2005, claimant sustained the work injury in question. According to the doctor's progress note for May 20, 2005, Bern R. Boyett, M.D., indicated:

A piece of steel fell, and hit him on the right anterior shin area. It broke the skin and he had a large bruise. He was unable to walk for a period of time. No fractures in the leg. The wound was secondarily infected and was treated by his personal doctor, Dr. Miller. Also initially at one point he went to the emergency room on 03/04/05 for treatment of leg infection. Records are available up until 03/18/05, but no records are available after that date.

The patient informs me that he has continued to be under the care of Dr. Miller to the current time.

MRI of the leg from 05/04/05 was available, and no fractures. It just shows resolving subcutaneous hematoma at the distal tibial level. Patient has not worked since the injury occurred.

Initially, claimant treated with his personal physician, Lori Miller, M.D. In May 2005, Ms. Heather Wessling, Claims Adjuster for Auto-Owners' Insurance Company, transferred claimant's care from Dr. Miller to Bern Boyett, M.D., a specialist in occupational health.

Dr. Boyett examined claimant on only two occasions, May 20, 2005 and June 10, 2005. Claimant desired physical therapy because he had experienced swelling and cramping in his right foot and near the right anterior shin area. (Defendant's exhibits A-1 and A-2) Dr. Boyett did not authorize a formalized physical therapy program.

Dr. Boyett advised claimant to walk for 15 to 20 minutes per day; to elevate the leg when sitting; and to use over the counter medications for pain control. Claimant was released to full duty with no restrictions and advised that he was discharged from care. Dr. Boyett wrote in his note of June 10, 2005, "Follow up only if needed." (Ex. A-3)

Claimant, on his own, returned to his personal physician, Dr. Miller. She in turn referred claimant to Bryan M. Trout, D.P.M. at Ankeny Foot and Ankle Specialists. Dr. Trout is a specialist in podiatric medicine.

Dr. Trout diagnosed claimant with "Contusion with probable neurapraxia, right ankle." (Ex. 4) Dr. Trout determined EMG's and NCV's of the right lower extremity were appropriate. (Ex. 4) Dr. Trout also discussed the probable benefit of physical therapy." (Ex. 4) Physical therapy was ordered.

Claimant commenced physical therapy at Norwalk Physical Therapy & Sports Medicine. He attended sessions on September 19, 22, 23 and 26, 2005. However, claimant's personal health insurance, Iowa Health Systems, did not cover the physical therapy services. Consequently, claimant discontinued the therapy sessions. Defendants denied payment for the services at Norwalk Physical Therapy & Sports Medicine.

During his telephone hearing, claimant testified his physical therapy sessions were helpful. Claimant testified he improved after he attended the four sessions. He wanted to continue treating with Dr. Trout and to have him declared as the authorized treating physician. Claimant testified he has a cordial and trusting relationship with Dr. Trout. Claimant prefers to continue treating with Dr. Trout, a specialist in the area of the foot. Claimant has confidence in Dr. Trout's abilities.

It is determined; claimant has proven by a preponderance of the evidence that he is entitled to alternate medical care. Dr. Boyett had absolutely nothing to offer claimant in the way of treatment. The physician discharged claimant from all medical care on June 10, 2005 despite claimant's complaints of cramps and swelling. Dr. Boyett did not consider his patient's concerns. Claimant was not receiving reasonable and prompt treatment from defendants as provided by Section 85.27 of the Iowa Code, as amended.

The petition for alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's application for alternate medical care is granted. Bryan Trout, D.P.M., is hereby designated the authorized treating podiatrist

Signed and filed this 18th day of October, 2005.

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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