BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NATHANIEL LEE,

Claimant,

vs.

KRAFT FOODS GROUP, INC.,

Employer,

and

INDEMNITY INSURANCE CO. OF NORTH AMERICA,

Insurance Carrier,
Defendants.

File No. 5055226

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant Nathaniel Lee.

This alternate medical care claim came on for hearing on November 19, 2015. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's exhibit 1and the testimony of claimant.

The agency file demonstrates that claimant served a copy of the original notice and petition for alternate medical care upon the employer on November 5, 2015 via certified mail, return receipt. The return receipt card indicates that both defendant employer, Kraft Foods Group, Inc. (Kraft), and their third party administrator (TPA) Broadspire, received a copy of the petition for alternate medical care in this matter. (Exhibit 1, page 8) Claimant's counsel represented he had made numerous efforts to contact the employer and their TPA and received no responsive communications. Claimant's counsel indicated that documents given to him by claimant indicate Broadspire is defendant employer's TPA.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of physical therapy for his left elbow injury.

FINDINGS OF FACTS

Claimant testified he sustained a work-related injury to his left elbow on September 8, 2015. Claimant said he worked a highly repetitive job at Kraft. Claimant said that on September 8, 2015 he felt a sharp pain in his left elbow.

Claimant testified that on September 9, 2015 he reported his left elbow injury to staff in the Kraft Health Care Department. He said it took Kraft two to three weeks before it sent him to a company doctor, Rick Garrels, M.D. Claimant said that before he saw Dr. Garrels, he was terminated from Kraft. He said that after he was terminated, and before he saw Dr. Garrels, he was treated by Waqas Hussain, M.D., an orthopedic surgeon. Claimant said he saw Dr. Hussain as he had left elbow pain and could not get any communication from Kraft on whom to see for care for the left elbow.

On October 20, 2015 claimant was evaluated by Dr. Hussain for left elbow pain. Dr. Hussain recommended an MRI and physical therapy for the left elbow. (Ex. 1, pp. 5-6)

In an October 28, 2015 letter, claimant's counsel requested Broadspire to authorize physical therapy recommended by Dr. Hussain. The letter was sent by both regular mail and facsimile. (Ex. 1, pp. 1 and 7)

In the petition, claimant's counsel certified the petition was sent to Kraft's business address at 1337 West Second Street, Davenport, Iowa 52802, on November 5, 2015. Claimant's counsel also indicated the petition was sent by certified mail to the employer's TPA at their address in Lexington, Kentucky. The return receipt for the petition shows it was received by Kraft on November 9, 2015. The return receipt also shows the petition was received by the employer's TPA on or about November 10, 2015. (Ex. 1, p. 8)

In a professional statement, claimant's counsel indicated he has tried by regular mail, facsimile and certified mail to communicate with defendant employer and their TPA, but has received no response from either party.

Given the record detailed above, I find that claimant properly served the employer a copy of the original notice and petition for alternate medical care. I find that claimant's counsel attempted, on numerous occasions, to make communications with the employer before the scheduled alternate medical care hearing without responsive communications from defendant.

Claimant's original notice and petition asserts in paragraph seven that the employer does not dispute this claim. Defendant failed to appear, failed to answer the

petition, and essentially defaulted in this alternate medical care proceeding. Therefore, the allegations of paragraph seven are accepted as accurate.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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).

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).

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).

Claimant had a work-related injury to his left elbow on September 8, 2015. Claimant was evaluated by an orthopedic surgeon who recommended physical therapy. Claimant has attempted to have the physical therapy authorized by defendant employer. Defendant employer has failed to respond, despite numerous attempts by claimant's counsel to communicate with the employer and the employer's TPA.

In this case, claimant has clearly demonstrated that defendant has not offered prompt or reasonable medical care. Defendant's failure to offer medical care is unreasonable and constitutes an abandonment of defendant's obligation to provide claimant medical care under Iowa Code section 85.27. Claimant has clearly established that defendant has not provided prompt medical care that is reasonably suited to treat his injury.

Given the claimant's requests for care and the lack of communications from the defendant, I find that defendant has not offered prompt medical care that is reasonably

suited to treat the claimant's work injury. I find that defendant has abandoned claimant's medical care. I find that defendant's failure to offer authorized medical care is unreasonable. Defendant is ordered to authorize the physical therapy sought by claimant.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted and defendant is ordered to provide claimant physical therapy for his work-related injury to his left elbow.

Signed and filed this 19th day of November, 2015.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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