

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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ELMER MORAN,	<b>FILED</b>	
Claimant,	NOV 25 2015	File No. 5054778
vs.	WORKERS COMPENSATION	ALTERNATE MEDICAL
TRIAD ELECTRIC & CONTROLS,		CARE DECISION
Employer, Defendant.		HEAD NOTE NO: 2701

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Claimant filed a petition seeking alternate medical care. A telephonic hearing on this petition was held as scheduled on November 25, 2015 commencing at 8:30 a.m.

Defendant, Triad Electric & Controls, did not appear in this proceeding. Defendant was given proper notice of this proceeding and a copy of the order scheduling the hearing was sent to defendant.

Defendant's liability for an injury on October 15, 2015 and the medical condition sought to be treated in this proceedings is established by default pursuant to Iowa Code section 17A.12(3).

FINDINGS OF FACT

As a result of a work injury on October 15, 2015, claimant injured his right shoulder. Initial treatment by a chiropractor did not improve his condition. Claimant then sought evaluation and treatment from Michael T. O'Neil, M.D., an orthopedist. Dr. O'Neil reports that x-ray imaging was insufficient and an MRI is needed to fully assess the right shoulder injury. Medications and a release from work have been issued. (Exhibit 1)

Defendant has failed to authorize any care and claimant is in need of orthopedic care. The best physician to provide this is Michael T. O-Neil, M.D.

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. See Lawyer, Iowa Workers' Compensation Law and Practice, section 15-4 and cases cited therein.

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). 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.

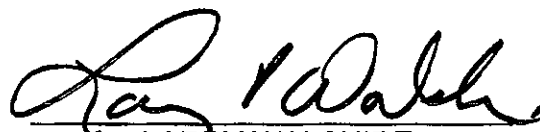
The question of reasonable care is a question of fact. An application for alternate medical care is not granted simply because the employee is dissatisfied with the care the employer has chosen. Mere dissatisfaction with the care is not sufficient grounds to grant an application for alternate medical 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 1995).

In this case, claimant has established the need for orthopedic treatment and such will be ordered.

ORDER

1. Defendant shall provide, at no expense to claimant, treatment of the right shoulder by Michael T. O'Neil, M.D., and any treatment modalities recommended or prescribed by Dr. O'Neil including, but not limited to, medications and medical imaging, including an MRI.
2. The costs of this proceeding are assessed to defendant.

Signed and filed this 25<sup>th</sup> day of November, 2015.



LARRY WALSHIRE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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LPW/srs