



PAUL T. BARTA
(402) 475-1075 - OFFICE
(402) 475-9515 - FACSIMILE
PBARTA@BAYLOREVNEN.COM
BAYLOREVNEN.COM

BAYLOR, EVNEN, CURTISS, GRIMIT & WITT, LLP
WELLS FARGO CENTER
1248 O STREET, SUITE 600
LINCOLN, NEBRASKA 68508

***The Court of Appeals of Iowa Clarification:
When It Has Jurisdiction to Consider a Claimant's Petition for Alternate
Medical Care and When it is Compelled to Mandatorily Dismiss the Same***



Recently, in *Cooksey v. Cargill, Inc.*, 2013 WL 5508539 (Iowa.App.2013), the Court of Appeals of Iowa clarified when it was appropriate for the Iowa Workers' Compensation Commissioner to consider a claimant's Petition for Alternate Medical Care. Under I.C.A. §85.27, the employer has the right to direct medical care for accepted workers' compensation injuries filed in Iowa. However, I.C.A. §876-4.48 does provide an injured worker in an accepted claim the right to petition the Workers' Compensation Commissioner for alternate medical care. Practically speaking, this provision typically arises when the claimant is dissatisfied with the employer-directed care or alleges that the employer has "abandoned" direction of care.

In *Cooksey*, the Claimant allegedly suffered an injury in 2008 while working for the employer. The employer recommended that the Claimant be treated by a specialist. Subsequent to the alleged injury, the employer acknowledged on the record that it did not dispute liability for the injury at the time. This is a key issue, as alternate medical care is only provided pursuant to Iowa statute in situations where the employer is *not* disputing liability. Therefore, in *denied* claims, as the employer is not directing care, the claimant has no right to request alternate medical care.

After approximately three years of medical care, a physician indicated that Claimant needed further injury-related care. However, at least two specialists indicated that Claimant's ongoing symptoms were the result of a pre-existing medical condition and not related to the original work accident. At that point, the employer refused to authorize any further medical care.

The Claimant subsequently filed a Petition for Alternate Medical Care. Although the employer had previously acknowledged in court pleadings that there was a work-related accident resulting in some injury, the employer indicated that it was disputing liability for the medical condition for which care was sought. Accordingly, as liability was then disputed, the reviewing Deputy dismissed the Claimant's Petition for Alternate Medical Care, but also indicated to the employer that it would be barred from asserting a lack of authorization defense in the future if the Claimant sought recovery of costs in obtaining medical care.

At that point, the Claimant filed an appeal alleging that the Commission should not have allowed the employer to deny liability as the employer was judicially estopped from doing so after admitting liability in prior hearings. Essentially, the Claimant argued that as the employer acknowledged in prior pleadings that an accident/injury occurred, the employer could not dispute liability in the hearing for Alternate Medical Care, but rather could only dispute the *extent* of needed care.

Addressing the issue of alleged judicial estoppel, the Court of Appeals of Iowa noted that judicial estoppel prohibits a party who has unequivocally previously asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding. Distinguishing the case from prior appellate decisions on the issue, the Court noted that as the employer and Claimant previously *agreed upon the care* and no prior judicial determination or pleading was made regarding the employer's liability or acceptance thereof for the injury, judicial estoppel would not apply. The Court noted that while the employer had previously admitted liability at a prior hearing, the Court had not judicially accepted that admission, as the two parties had come to an agreement independent of the underlying admission and moved to dismiss the application before the reviewing Deputy Commissioner made a determination.

In essence, the Court of Appeals of Iowa's decision stands for two propositions regarding Petitions for Alternate Medical Care. First, unless an employer admits liability in response to a Petition for Alternate Medical Care and an Order is directed by the Iowa Workers' Compensation Commissioner relying on that admission, the employer will not likely be judicially estopped from subsequently denying liability.

Second, in a case where multiple Petitions for Alternate Medical Care have been filed, a practice not uncommon in contentious accepted claims, if the employer admits liability in a prior hearing for a Petition for Alternate Medical Care, that employer will very likely be precluded from denying liability *subsequently*, regardless of the strength of the evidence relied upon. This is somewhat concerning given that many times evidence of a claimant's significant history of pre-existence is not known until many months after the alleged injury occurs and the claim is accepted.

In such a circumstance, it appears that the Court of Appeals of Iowa indicates that the proper response is to admit liability for an accident, but to allege that the care recommended by the employer's expert, or lack thereof, is the most appropriate for the accepted injury. While this seems a minor distinction, it does put an employer in a difficult position. This also emphasizes the need to thoroughly investigate a claimant's prior medical history upon reporting of the claim. We recommend that employers immediately obtain records releases from claimants, request all records from primary care physicians, and thoroughly investigate the same for any references to any providers or pre-existing conditions which may have an effect on the underlying injury claim. This allows an employer or insurer to thoroughly investigate from an early phase and determine whether liability should be accepted and care directed.

For any questions regarding direction of care under Iowa Workers' Compensation Law, please contact Iowa workers' compensation attorneys Tim Clarke, Caroline Westerhold, or Paul Barta.