

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LEE R. JONES,)
)
 Claimant,)
)
 v.)
)
STAR FALLS TRANSPORTATION,)
LLC,)
 Employer,)
)
 and)
)
STATE INSURANCE FUND,)
)
 Surety,)
)
 Defendants.)
_____)

IC 02-508902

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND RECOMMENDATION**

August 7, 2006

INTRODUCTION

The Industrial Commission assigned this matter to Referee Lora Rainey Breen, who conducted an expedited hearing in Boise on April 11, 2006. Scott Rose represented Claimant and Max M. Sheils, Jr., represented Defendants. The parties presented oral and documentary evidence at hearing, took no post-hearing depositions, and filed post-hearing briefs. The matter came under advisement on June 19, 2006.

ISSUE

The sole issue to be determined at this time is whether the care provided by Dr. Radnovich is compensable.

CONTENTIONS OF THE PARTIES

Claimant asserts he received a valid referral from a treating physician, Dr. Gross, to Dr.

Radnovich. Even if the referral was found to be invalid, Claimant is entitled to seek, on his own, treatment by a primary care provider such as Dr. Radnovich because Surety has failed to provide him with such care. Moreover, Dr. Radnovich's treatment is reasonable and necessary.

Defendants contend the "referral" from Dr. Gross is invalid and was obtained by Claimant through a misrepresentation made to Dr. Gross' office. Furthermore, Defendants have not denied medical care to the Claimant such that he would be entitled to seek treatment on his own and Claimant's failure to comply with Idaho Code § 72-432 requires a finding of non-compensability. Lastly, Dr. Radnovich's care is not reasonable and necessary treatment.

EVIDENCE CONSIDERED

The record in the present matter consists of the following:

1. The hearing testimony of Audra Shaw, Richard Radnovich, D.O., Vicki Baer, and Claimant; and,
2. Claimant's Exhibits 1 and 2 admitted at hearing.

The Referee notes that this expedited matter is being dealt with in the context of other proceedings, much larger in scope, currently underway in this case and the need to segregate the records in the two proceedings has been emphasized. At the outset of hearing, the Referee stated, "this is an expedited proceeding on a single issue and so it is therefore separate and will be adjudicated separately from the prior proceedings that we've had in this case that are still pending and open and have not come under advisement. I anticipate that this issue will come under advisement much quicker so that we'll get through this issue while the other is still pending, and I'll just note, also, that *the record from the previous proceedings is not included in any decision I make from today's proceedings.*" Hearing Transcript, pp. 4-5. As such, the Referee will not consider the references and citations in Claimant's opening brief (primarily

pages 9-11) to evidence not listed above.

After considering the record and arguments of the parties, the Referee submits the following Findings of Fact, Conclusion of Law, and Recommendation for review by the Commission.

FINDINGS OF FACT

1. In May 2002, Claimant sustained multiple injuries including facial and upper and lower extremity fractures in a work-related truck accident. He continues to have ongoing treatment and pain related to the accident.

2. Although his current primary residence is in Florida, Claimant has been in Boise for an extended period of time and has undergone at least three surgical procedures, involving upper and lower extremities, since arriving here. The evidence is conflicting as to whether Claimant will return to Florida and, if so, when.

3. Orthopedic surgeon Dominic Gross, M.D., recently performed two surgical procedures on Claimant, a wrist surgery and a shoulder surgery, with the last one occurring in December 2005. Surety paid for both surgeries and considers Dr. Gross to be a treating physician for Claimant. Dr. Gross does not “do pain management,” but prescribes medications to address pain associated with his surgeries. He specializes in upper extremity treatment. Hearing Transcript, p. 14. Claimant sees another orthopedist for lower extremity treatment.

4. On February 22, 2006, Claimant’s attorney called Dr. Gross’ office and spoke with his “scrub tech,” Audra Shaw (Shaw). Shaw indicated she is often referred to as a nurse in Dr. Gross’ office. Claimant’s attorney called to request a referral for Claimant to see Richard Radnovich, D.O., for overall pain management and to have Claimant’s medications managed by one physician. Dr. Radnovich is board certified in family medicine, osteopathic manipulative

treatment, and sports medicine. He does do pain management.

5. Shaw was under the impression after talking with Claimant's attorney that the referral was "okayed" with Surety. Hearing Transcript, p. 115. She mistakenly believed Surety had to approve all workers' compensation referrals: "I've been in the office long enough to know that the State Insurance Fund has to approve all work comp referrals." *Id.* at 100. The workers' compensation law does not support such a proposition.

6. Based on her conversation with Claimant's attorney, Shaw wrote a referral to Dr. Radnovich, stamped Dr. Gross' signature on the referral, informed Dr. Gross of her actions, and thereafter faxed the referral to Dr. Radnovich's office on or about March 3, 2006. In Dr. Gross' office, Shaw and Thomas Tyron, P.A., are authorized to prepare referrals under Dr. Gross' name in the normal course of business.

7. Surety subsequently denied prescriptions as well as treatment provided by Dr. Radnovich because, "There's not a valid referral from a treating physician." Hearing Transcript, p. 63. Surety asserts the referral came from Claimant and his attorney.

8. According to Shaw, Dr. Gross has been apprised of the dispute over the referral faxed to Dr. Radnovich from his office containing his signature. Dr. Gross has not withdrawn the referral that was sent under his name, and he has not provided any instruction, written or otherwise, that would alter, clarify, or nullify the action.

DISCUSSION AND FURTHER FINDINGS

Compensability of Care. An employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time

thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1). Nothing in this section shall limit the attending physician from arranging for consultation, referral, or specialized care without permission of the employer. Idaho Code § 72-432(4).

Surety's case manager explained at hearing that the referral was denied because it came from the Claimant and his attorney, not Dr. Gross. However, Defendants have provided no case law, or even a strong argument, to support that a claimant cannot initiate a request for referral through his treating physician's office, and it is likely such referrals are common. The fact of the matter is the referral was produced in the normal course of Dr. Gross' business, was faxed from Dr. Gross' office after he was told about it, contains Dr. Gross' signature stamp, and has not been withdrawn by Dr. Gross.

Defendants take issue with what they consider to be a "misrepresentation" of the facts by Claimant's attorney to Shaw, to the effect that Surety had approved the referral. The Referee finds the issue of whether or not Shaw believed, or was led to believe, Surety had approved the referral irrelevant since Surety approval was unnecessary, contrary to Shaw's incorrect belief. Even if it were relevant, the Referee cannot conclude from the record that a misrepresentation, as opposed to a misinterpretation or misunderstanding, occurred. This is primarily because Shaw, when describing *in her own words* the conversation between her and the attorney, has inconsistent recollections about what was said and when it was said. At one point, she even eluded to two conversations (one before the referral and one after) from which she obtained the information on which she said she relied (see Hearing Transcript, pp. 101-102).

The Referee concludes the referral to Dr. Radnovich is valid and Dr. Radnovich's treatment is compensable.

FINDINGS, CONCLUSION, AND RECOMMENDATION - 5

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STATE INSURANCE FUND,)	
)	August 7, 2006
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Lora Rainey Breen submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED That:

1. The referral to Dr. Radnovich is valid and Dr. Radnovich's treatment is compensable.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 7 day of August, 2006.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
James F. Kile, Commissioner

/s/
R. D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of August, 2006, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

SCOTT ROSE
300 W MAIN ST STE 153
BOISE ID 83702

MAX M SHEILS JR
P O BOX 388
BOISE ID 83701

jkc

/s/