

**DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

**ISSUE**

A contested case hearing was held on January 7, 2008, which was closed on January 16, 2008, to decide the following disputed issue:

1. Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that cubital tunnel release and surgical treatment for epicondylitis in the left elbow are not reasonable and necessary health care services for the compensable injury of \_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by an ombudsman. Carrier appeared and was represented by attorney.

**BACKGROUND INFORMATION**

On \_\_\_\_, Claimant sustained a compensable injury to his left elbow while working as a material handler. Initially, Claimant underwent chiropractic treatment and was improving until he was referred to an orthopedic doctor for evaluation. The orthopedic doctor on June 4, 2007, recommended tennis elbow release and possible cubital tunnel release on the left side because "both of them bother him" although the orthopedic doctor noted that review of claimant again would be prudent since Claimant has mild clinical findings of cubital tunnel syndrome.

The IRO found that:

- a. There was no clear clinical indication for surgical intervention citing a normal electrodiagnostic study;
- b. Initial physical examination did not support any surgical lesion;
- c. There was insufficient clinical data support a surgical intervention; and
- d. The treatment plan did not align with the Official Disability Guidelines.

Under the Official Guidelines (ODG) in reference to Elbow, Surgery for Cubital Tunnel Syndrome (ulnar nerve entrapment) and Surgery for Epicondylitis, the criteria for the former and recommendation for the latter are:

"ODG Indications for Surgery -- Simple Decompression (SD) for cubital tunnel syndrome: Initial conservative treatment, requiring ALL of the following:  
- Exercise: Strengthening the elbow flexors/extensors isometrically and isotonicly within 0-45 degrees

- Activity modification: Recommend decreasing activities of repetition that may exacerbate the patient's symptoms. Protect the ulnar nerve from prolonged elbow flexion during sleep, and protect the nerve during the day by avoiding direct pressure or trauma.
- Medications: Nonsteroidal anti-inflammatory drugs (NSAIDs) in an attempt to decrease inflammation around the nerve.
- Pad/splint: Use an elbow pad and/or night splinting for a 3-month trial period. Consider daytime immobilization for 3 weeks if symptoms do not improve with splinting. If the symptoms do improve, continue conservative treatment for at least 6 weeks beyond the resolution of symptoms to prevent recurrence.

#### "Surgery for epicondylitis

Under study. Almost all patients respond to conservative measures and do not require surgical intervention. Treatment involves rest, ice, stretching, strengthening, and lower intensity to allow for maladaptive change. Any activity that hurts on extending or pronating the wrist should be avoided. With healing, strengthening exercises are recommended. Patients who are recalcitrant to six months of conservative therapy (including corticosteroid injections) may be candidates for surgery. There currently are no published controlled trials of surgery for lateral elbow pain. Without a control, it is impossible to draw conclusions about the value of surgery. Generally, surgical intervention may be considered when other treatment fails, but over 95% of patients with tennis elbow can be treated without surgery."

Claimant recognized that there was a lack of treatment preceding the surgical recommendation, and the record was held open for a short period to allow Claimant and Carrier to resolve a previous denial of change of doctor. However, Claimant subsequently requested that this contested case hearing be closed and that a decision be issued prior to proceeding with a change of doctor request.

The IRO correctly upheld the previous adverse decision against the Claimant. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that cubital tunnel release and surgical treatment for epicondylitis in the left elbow are not reasonable and necessary health care services for the compensable injury of \_\_\_\_, in that Claimant has not received recommended treatment under the ODG prior to pursuing a surgery request.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

### **FINDINGS OF FACT**

1. The parties stipulated to the following facts:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On \_\_\_\_, Claimant was the employee of Employer, when he sustained a compensable injury.

2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that cubital tunnel release and surgical treatment for epicondylitis in the left elbow are not reasonable and necessary health care services for the compensable injury of \_\_\_\_.

### **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. Cubital tunnel release and surgical treatment for epicondylitis in the left elbow are not reasonable and necessary health care services for the compensable injury of \_\_\_\_.

### **DECISION**

Cubital tunnel release and surgical treatment for epicondylitis in the left elbow are not reasonable and necessary health care services for the compensable injury of \_\_\_\_.

### **ORDER**

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251**

Signed this 18th day of January, 2008.

Charles T. Cole  
Hearing Officer