

**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 benefit contested case hearing was held on March 7, 2008, to decide the following disputed issue:

Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that plantar fascial release related to left foot/ankle is not a reasonable and necessary health care service for the compensable injury of \_\_\_?

**PERSONS PRESENT**

Requestor, MM, appeared and was represented by an (Attorney). Respondent, State Office of Risk Management appeared and was represented by an (Attorney). Present on behalf of the employer was LB.

**BACKGROUND INFORMATION**

It is undisputed that Claimant sustained a compensable injury on \_\_, when she was chasing a resident of the School in the street and caught the curb wrong with her left foot. She testified that she felt immediate stabbing pain in the middle of her foot and numbness in her pinkie toe. Claimant's treating doctor, Dr. E diagnosed a plantar fascia strain on the date of injury and ordered a cast shoe, crutches and medication as well as light duty. Claimant treated conservatively, with medication and physical therapy (which was discontinued after two visits secondary to increased pain) for traumatic plantar fasciitis and lateral plantar nerve irritation. Dr. E tried several medications in an effort to control Claimant's pain and nerve symptoms, with no success. Ultimately, he referred Claimant to an orthopedic surgeon for a second opinion.

Dr. C, the orthopedic surgeon, performed EMG/NCV studies in an attempt to rule out possible neuritis in the tarsal tunnel. The EMG/NCV studies were normal. Dr. C suspected traumatic plantar fasciitis and put Claimant on a steroid dosepack, which helped the numbness, but did not alleviate the pain. Dr. C ultimately recommended plantar fascia release surgery and recommended a custom arch support thereafter. Carrier denied preauthorization for the surgery. Although the reviewer did agree with Dr. E that the case was complex and Claimant had extensive conservative care, it cited unresolved issues and the fact that the ODG recommends the surgery only in rare cases as the rationale for the denial.

An IRO reviewer, an orthopedic surgeon, stated that there were no abnormalities at the heel documented by MRI, x-ray or electrodiagnostic testing, therefore there was no evidence to support surgical treatment. The IRO reviewer checked off the "Medical Judgment, Clinical Experience and Expertise in Accordance with Accepted Standards" and "ODG" boxes on an attached sheet entitled

“A Description and the Source of the Screening Criteria or Other Clinical Basis Used to Make the Decision,” but did not cite a specific section or provision in the *ODG*.

**Texas Labor Code Section 408.021** provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. **Section 401.011(22-a)** defines health care reasonably required as “health care that is clinically appropriate and considered effective for the injured employee’s injury and provided in accordance with best practices consistent with: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.” “Evidence based medicine” is further defined, by **Section 401.011(18-a)** as the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

The Division of Workers’ Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*.

The Carrier argued at the hearing that Claimant needed more conservative care prior to surgical intervention. The *ODG*, under “Procedure Summary – Ankle & Foot” recommends surgical intervention in severe cases when other treatment fails, noting that in general, heel pain resolves with conservative treatment. In recalcitrant cases, however, the *ODG* notes that surgical release can be expected to provide excellent relief of pain and facilitate return to normal activity. There is no evidence that injected corticosteroid therapy is effective in reducing plantar heel pain.

Dr. Cooke, noted that the *ODG* does not have a specific treatment guideline for plantar fasciitis, and noted that the studies cited by the *ODG* found that no randomized trials for evaluating the surgery had been identified and therefore, no conclusions could be drawn. Claimant has failed extensive conservative care, including plantar fascia stretching, physical therapy and drug therapy; has pain in functional limitations despite conservative care; and, her case clearly constitutes one of the recalcitrant cases referred to by the *ODG*.

As noted previously herein, “health care reasonably required” means health care that is clinically appropriate and considered effective for the injured employee’s injury and provided in accordance with best practices consistent with evidence-based medicine or if that evidence is not available, generally accepted standards of medical practice recognized in the medical community. The Division requires health care providers to provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required. As Dr. C opined, to the extent that the *ODG* takes a position on plantar fasciitis release surgery, it recommends it in cases like the Claimant’s herein.

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the

opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert's bald assurance of validity is not enough. See *Black v. Food Lion, Inc.*, 171 F.3<sup>rd</sup> 308 (5<sup>th</sup> Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). When determining reliability, the hearing officer must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990).

In the instant case, the preponderance of the evidence is contrary to the IRO decision and the requested plantar fascial release related to left foot/ankle for this injured worker meets the criteria set out in the *ODG*. Dr. C, Dr. E, and the designated doctor, Dr. B, all believe that the recommended surgery is reasonably necessary for treatment of the compensable injury. In the instant case, the *ODG* supports their opinions, and is contrary to the IRO decision.

The 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 she sustained a compensable injury.
  - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of \_\_\_.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The treating doctor requested plantar fascial release related to left foot/ankle after extensive conservative treatment failed and Claimant continued to have pain in functional limitations despite that conservative care.
4. The requested service is consistent with the *ODG* criteria for traumatic plantar fasciitis.

### **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.

2. Venue was proper in the (City) Field Office.
3. The preponderance of the evidence is contrary to the decision of IR0 that plantar fascial release related to left foot/ankle is not a reasonable and necessary health care service for the compensable injury of \_\_\_.

### **DECISION**

The preponderance of the evidence is contrary to the decision of IR0 that plantar fascial release related to left foot/ankle is not a reasonable and necessary health care service for the compensable injury of \_\_\_.

### **ORDER**

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act and the Commissioner's Rules.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person, the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15<sup>th</sup> STREET  
WILLIAM P. CLEMENTS, JR.  
STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701**

For service by mail, the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777**

Signed this 14<sup>th</sup> day of April, 2008.

Erika Copeland  
Hearing Officer