

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 opened on May 6, 2008, and closed on June 9, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a repeat EMG/ nerve conduction study is not a reasonable and necessary health care service for the compensable injury of _____?

PARTIES PRESENT

Petitioner appeared and was assisted by IG, Ombudsman. Carrier appeared and was represented by JRT, attorney.

BACKGROUND EVIDENCE

Claimant sustained a compensable injury on _____. She subsequently underwent a right open carpal tunnel release on July 31, 2007 and a left open carpal tunnel release on September 13, 2007. Since that time, claimant has continued to experience symptoms of numbness, pain and tingling in her fingers and hands.

Dr. V, claimant's hand specialist, requested preauthorization for a repeat EMG nerve conduction study to determine if there was a complete release and whether or not further surgery was indicated. The carrier denied the doctor's request. The IRO upheld the carrier's decision, opining that "even with successful carpal tunnel release, EMG findings can remain abnormal for prolonged periods of time and have no direct correlation to symptomatology."

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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 evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best qualified 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 accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the Official Disability Guidelines (ODG).

Both Dr. V and Dr. F, claimant's treating doctor, provided letters indicating that a repeat EMG was necessary to guide further medical intervention; however, Dr. F's letter did not mention the ODG and Dr. V's letter states only that "the ODG is not specific about recurrent carpal tunnel syndrome." Although Dr. V refers to Green's Operative Hand Surgery textbooks in support of a repeat EMG, he does not provide a specific citation as evidence in support of the claimant's position.

Health care reasonably required under the Texas Workers' Compensation Act must be evaluated based on evidence based medicine. In this case, the IRO decision evaluated the health care request in view of evidence based medicine. The preponderance of the evidence is not contrary to the IRO decision.

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 the (Employer) when she 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. Dr. V, a hand specialist, recommended a repeat EMG to determine if there is quantifiable change in the results of the EMG.
4. The preponderance of the evidence is not contrary to the IRO that a repeat EMG is not a reasonable and necessary health care service 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. A repeat EMG is not a reasonable and necessary health care service for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that a repeat EMG is not a reasonable and necessary health care service 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 11th day of June, 2008.

Carolyn Cheu
Hearing Officer