

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 July 16, 2008, to decide the following disputed issue:

Whether occupational therapy twice weekly for eight weeks is healthcare reasonably required by Texas Labor Code Section 408.021?

PERSONS PRESENT

Claimant appeared and was assisted by ombudsman, RPR. Carrier appeared and was represented by attorney, LH.

BACKGROUND INFORMATION

Claimant worked as a cashier for (Employer). She sustained injury on _____ when a box she was helping load dropped on her right hand. Claimant was diagnosed with a right hand second metacarpophalangeal joint sprain. MRI scan revealed bone marrow edema without fracture at the base of the proximal phalanx of the index finger. No dislocation was revealed.

The Claimant has previously undergone a course of physical therapy of three times a week for two weeks for her right hand. Claimant testified that the course of therapy did not improve her hand condition. Claimant's physician, Dr. K, has requested an additional course of occupational therapy with a specialist in hand therapy twice weekly for eight weeks.

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**.

Accordingly, in a medical necessity dispute, the first issue is whether the proposed care is consistent with the *ODG*. The IRO, identified as a physician board certified in physical medicine and rehabilitation, upheld the denial stating that additional occupational therapy is not medically necessary.

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.3rd 308 (5th 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) *affd*, 824 S.W.2d 568, 574 (Tex. Crim. App. 1992).

In the case at hand, the Claimant argued that the *ODG* permitted additional therapy, however, a second course of therapy, absent surgery, is not indicated by the *ODG*. For the hand sprain/strain diagnosis, the recommendation is nine visits over eight weeks. Claimant had six visits in her initial course of therapy, which, according to her own testimony, did not improve her condition. The Claimant did not present evidence-based medical evidence as to the appropriateness of the proposed occupational therapy and did not establish that no such evidence-based medical evidence is available. Nor was evidence presented that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. Dr. K's medical reports do not reference the *ODG* or other evidence-based medicine providing a rationale for departing from the *ODG*, and as such, the evidence does not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. 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 (Employer), when she sustained a compensable injury.

- C. The IRO determined that the requested occupational therapy twice weekly for eight weeks was not reasonable and necessary health care 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 occupational therapy twice weekly for eight weeks.
 4. Claimant previously attended six treatments of occupational therapy for her right hand injury.
 5. The *ODG* does not recommend a second course of occupational therapy for a hand sprain/strain injury.
 5. Claimant did not present evidence-based medical evidence as to the appropriateness of the proposed occupational therapy twice weekly for eight weeks.
 6. Claimant did not establish that no such evidence-based medical evidence is available to justify occupational therapy twice weekly for eight weeks.
 7. Claimant did not establish that the proposed occupational therapy twice weekly for eight weeks meets generally accepted standards of medical practice recognized in the medical community.
 8. The preponderance of the evidence is not contrary to the decision of IRO that occupational therapy twice weekly for eight weeks 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 was proper in the (City) Field Office.
3. Occupational therapy twice weekly for eight weeks is not a reasonable and necessary health care service for the compensable injury of _____.

DECISION

Occupational therapy twice weekly for eight weeks 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 Section 408.021.

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

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, STE. 1050
AUSTIN, TX 78701-3232**

Signed this 23rd day of July, 2008.

Deeia Beck
Hearing Officer