

MEDICAL CONTESTED CASE HEARING NO. 09089

M6-09-17007-01

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.

ISSUES

A contested case hearing was held on January 26, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to surgical repair to the right lateral epicondyle for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by IG, ombudsman.
Respondent/Carrier appeared and was represented by PS, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her right upper extremity on _____. Claimant has been diagnosed with lateral epicondylitis and she has undergone physical therapy and received six steroid injections for treatment of this injury. Claimant's treating doctor, Dr. L, has recommended surgical repair of the right lateral epicondyle which was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a board certified orthopedic surgeon, upheld the previous adverse determination noting that there was no evidence of a recent trial of physical therapy directed specifically at the Claimant's elbow complaints and that there is no information regarding a workplace ergonomic assessment. The reviewer concluded that the Claimant's diagnosis is not clear and, based on the submitted information, she does not meet the guidelines for surgical intervention.

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.

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 *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 *ODG*.

Pursuant to the *ODG* for surgical repair to the lateral epicondyle:

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. (Buchbinder-Cochrane, 2002) (California, 1997) (Piligian, 2000) (Foley, 1993) (AHRO, 2002) (Theis, 2004) (Jerosch, 2005) (Balk, 2005) (Sennoune, 2005) (Szabo, 2006) Disappointing results of surgery were found in litigants with epicondylitis. (Kay, 2003) (Balk, 2005) Surgery is not very common for this condition. In workers' compensation, surgery is performed in only about 5% cases. (WLDI, 2007) For the minority of people with lateral epicondylitis who do not respond to nonoperative treatment, surgical intervention is an option. The surgical techniques for treating lateral epicondylitis can be grouped into three main categories: open, percutaneous, and arthroscopic. Although there are advantages and disadvantages to each procedure, no technique appears superior by any measure. Therefore, until more randomized, controlled trials are done, it is reasonable to defer to individual surgeons regarding experience and ease of procedure. (Lo, 2007)

Dr. L, an orthopedic surgeon, has recommended the Claimant undergo surgery to repair the epicondyle. Dr. L notes that the Claimant underwent physical therapy prior to her presenting to his office and that he sees very few patients who get much response out of therapy if they have true epicondylitis. Dr. L emphasized that he believed the Claimant needs the surgery. Dr. L specifically states, "I do think the surgery is needed and I cannot understand how someone can decide for the patient and her treating surgeon who has been treating her for nearly 2-1/2 years what she needs and that my decisions regarding her are incorrect." Dr. L's report provides his opinion regarding the necessity for surgery; however, he does not cite or refer to any evidence-based medicine to support his recommendation. In accordance with DWC Rule 133.308(t), the party appealing the IRO decision has the burden of overcoming the decision issued by the IRO by a preponderance of *evidence-based* medical evidence. Claimant has failed to meet this burden. The evidence-based medical evidence supports the decision of the IRO.

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).
 - C. Claimant sustained a compensable injury on _____.
- 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-based medical evidence is not contrary to the decision of the IRO.
 - 4. The requested surgical repair to the right lateral epicondyle is not health care reasonably required 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. The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to surgical repair to the right lateral epicondyle for the compensable injury of _____.

DECISION

Claimant is not entitled to surgical repair to the right lateral epicondyle 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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN, TX 78701**

Signed this 26th day of January, 2009.

Carol A. Fougerat
Hearing Officer