

**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 March 24, 2009 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 twelve sessions of occupational therapy is not a reasonable and necessary health care service for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was represented by CS, attorney. Carrier appeared and was represented by SL, attorney.

**BACKGROUND INFORMATION**

The claimant was injured on \_\_\_\_\_ when her hand was caught in an operating room door, hyperextending her thumb and causing damage to both her hand and wrist. MRI's were normal except for a possible mild effusion of the mid carpal joint. A Functional Capacity Evaluation performed in September 2008 placed the claimant in the sedentary physical demand level. Medical documents indicate that the claimant received twelve weeks of occupational therapy with Total Care beginning approximately one month after the date of injury. (The claimant's testimony oscillated between eight and twelve such sessions.) She also received eight physical therapy sessions from her treating doctor thereafter. The IRO determined that the twelve additional occupational therapy sessions the claimant is seeking are not reasonable and necessary treatment for the injury because no documentation was provided explaining why additional therapy is needed and instead asserts that home exercises and a gradual return to work are the preferred methods for improving the claimant's hand and wrist strength.

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 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 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 ODG.

Under the Official Disability Guidelines in reference to "Sprains and Strains, Hand or Fingers," the following recommendation is made:

"At 3 to 4 weeks after the injury, dexterity tasks, gradual strengthening exercises, and resumption of daily life tasks are introduced to restore the use of the injured structure for functional hand activities."

It is further recommended that the claimant consult a physical, occupational, or hand therapist for up to ten visits within a span of four weeks.

According to the IRO, the occupational therapy the claimant has already received is sufficient treatment for this injury, and further occupational therapy is neither necessary nor consistent with the ODG. The claimant failed to present evidence-based medicine as to the appropriateness of the proposed treatment.

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), and 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 was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Twelve sessions of occupational therapy 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. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that twelve sessions of occupational therapy is not a reasonable and necessary health care service for the compensable injury of \_\_\_\_\_.

### **DECISION**

Twelve sessions of occupational therapy 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 **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, TEXAS 78701**

Signed this 27<sup>th</sup> day of March, 2009.

Robert Greenlaw  
Hearing Officer