

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 May 7, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to additional occupational therapy sessions for left hand therapy for the compensable injury of _____?

Upon request of the parties and for good cause shown, the issue was amended as follows:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to 3x wk for 4 wks occupational therapy sessions to the left hand for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by FA, ombudsman. Respondent/Carrier appeared and was represented by BP, attorney.

BACKGROUND INFORMATION

The claimant sustained a crush injury to his left hand for which he underwent amputation of the ring and little finger of the left hand. The claimant is left hand dominant. By the time of the initial request, the claimant had undergone about 70 physical therapy sessions and over 80 sessions by the time of the contested case hearing. The Official Disability Guidelines (ODG) recommends 18 physical therapy sessions for an amputation of the thumb or a finger and 36 sessions for post replantation, which procedure the claimant did not undergo.

Physical Therapy Guidelines

Physical Therapy Guidelines, showing recommended frequency and duration of PT visits are next. Only appropriate conditions have physical therapy guidelines. These guidelines provide evidence-based benchmarks for the number of visits with a physical or occupational therapist and the period of time during which these visits take place. (Note: These guidelines do not include work hardening programs.) The physical therapy guidelines do not describe the type of therapy required, and the number of visits does not include physical therapy that the patient should perform in their own home or work site, after proper training from

a clinician. Unless noted otherwise, the visits indicated are for outpatient physical therapy, and **the physical therapist's judgment is always a consideration in the determination of the appropriate frequency and duration of treatment.** Support for the physical therapy guidelines is relevant medical literature and actual experience data, combined with consensus review by experts. The most important data sources are the high quality medical studies that are referenced in the treatment guidelines, *ODG Treatment in Workers' Comp*, within the Procedure Summaries of each relevant chapter, summarized under the entry for "Physical Therapy." For clinical trials that show effectiveness for these therapies, the number of visits required to achieve this are isolated from each study and combined with the same information from other successful studies to arrive at the benchmark number of visits in ODG.

There are a number of overall physical therapy philosophies that may not be specifically mentioned within each guideline: (1) As time goes by, one should see an increase in the active regimen of care, a decrease in the passive regimen of care, and a fading of treatment frequency; (2) The exclusive use of "passive care" (e.g., palliative modalities) is not recommended; (3) Home programs should be initiated with the first therapy session and must include ongoing assessments of compliance as well as upgrades to the program; (4) Use of self-directed home therapy will facilitate the fading of treatment frequency, from several visits per week at the initiation of therapy to much less towards the end; (5) Patients should be formally assessed after a "six-visit clinical trial" to see if the patient is moving in a positive direction, no direction, or a negative direction (prior to continuing with the physical therapy); & (6) When treatment duration and/or number of visits exceeds the guideline, exceptional factors should be noted.

Generally there should be no more than 4 modalities/procedural units in total per visit, allowing the PT visit to focus on those treatments where there is evidence of functional improvement, and limiting the total length of each PT visit to 45-60 minutes unless additional circumstances exist requiring extended length of treatment. Treatment times per session may vary based upon the patient's medical presentation but typically may be 45-60 minutes in order to provide full, optimal care to the patient. Additional time may be required for the more complex and slow to respond patients. While an average of 3 or 4 modalities/ procedural units per visit reflect the typical number of units, this is not intended to limit or cap the number of units that are medically necessary for a particular patient, but documentation should support an average greater than 4 units per visit. These additional units should be reviewed for medical necessity, and authorized if determined to be medically appropriate for the individual injured worker.

As described above, for more detail users should refer to *ODG Treatment in Workers' Comp*, within the Procedure Summaries of each relevant chapter, for recommendations about specific treatments and modalities, along with supporting links to the highest quality relevant medical studies, which have been summarized, rated, and highlighted. In these Procedure Summaries ODG covers many different types of treatments that can be supported by the medical evidence, and it also identifies the maximum number of visits that can be justified by the evidence; however, this does not mean that a provider should do every possible

treatment that may be recommended (actually, this would be highly unlikely since different specialties would be required), or always deliver the maximum number of visits, without taking into account what was needed to cure the patient in a particular case. Furthermore, duplication of services is not considered medically necessary. While the recommendations for number of visits are guidelines and are not meant to be absolute caps for every case, they are also not meant to be a minimum requirement on each case (i.e., they are not an “entitlement”). Any provider doing this is not using the guidelines correctly, and provider profiling would flag these providers as outliers. This applies to all types of treatment, and not just physical therapy. Furthermore, flexibility is especially important in the time frame recommendations. Generally, the number of weeks recommended should fall within a relatively cohesive time period, between date of first and last visit, but this time period should not restrict additional recommended treatments that come later, for example due to scheduling issues or necessary follow-up compliance with a home-based program. When there are co-morbidities, the same principles should apply as in the ODG guidelines for return-to-work. See Additional note on co-morbidities at the end of the description of the Return-To-Work "Best Practice" Guidelines. In estimating the maximum number of treatment visits for workers with multiple diagnoses, users should use the number from the diagnosis with the longest number of visits. This assumes that whatever separate therapy, if any, that the lesser diagnosis requires, it can be done during the same visits addressing the more serious problem. If there are reasons why these therapies cannot be concurrent, documentation should support medical necessity. Also see Multiple incidences of disability duration in the same section for recommendations regarding number of treatment visits, for example, physical therapy, in these situations. And physical therapy visits post surgery should be considered separately from visits used up in an attempt at conservative treatment that might have avoided surgery.

Physical medicine treatment (including PT, OT and chiropractic care) should be an option when there is evidence of a musculoskeletal or neurologic condition that is associated with functional limitations; the functional limitations are likely to respond to skilled physical medicine treatment (e.g., fusion of an ankle would result in loss of ROM but this loss would not respond to PT, though there may be PT needs for gait training, etc.); care is active and includes a home exercise program; & the patient is compliant with care and makes significant functional gains with treatment.

Physical/ Occupational therapy

Recommended. Positive (limited evidence). See also specific physical therapy modalities by name. Also used after surgery and amputation. Early physical therapy, without immobilization, may be sufficient for some types of undisplaced fractures. It is unclear whether operative intervention, even for specific fracture types, will produce consistently better long-term outcomes. There was some evidence that 'immediate' physical therapy, without routine immobilization, compared with that delayed until after three weeks immobilization resulted in less pain and both faster and potentially better recovery in patients with undisplaced two-part fractures. Similarly, there was evidence that mobilization at one week instead of three weeks alleviated pain in the short term without compromising

long-term outcome. (Handoll-Cochrane, 2003) (Handoll2-Cochrane, 2003) During immobilization, there was weak evidence of improved hand function in the short term, but not in the longer term, for early occupational therapy, and of a lack of differences in outcome between supervised and unsupervised exercises. Post-immobilization, there was weak evidence of a lack of clinically significant differences in outcome in patients receiving formal rehabilitation therapy, passive mobilization or whirlpool immersion compared with no intervention. There was weak evidence of a short-term benefit of continuous passive motion (post external fixation), intermittent pneumatic compression and ultrasound. There was weak evidence of better short-term hand function in patients given physical therapy than in those given instructions for home exercises by a surgeon. (Handoll-Cochrane, 2002) (Handoll-Cochrane, 2006) Hand function significantly improved in patients with rheumatoid arthritis after completion of a course of occupational therapy ($p < 0.05$). (Rapoliene, 2006)

ODG Physical/Occupational Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 visits or more per week to 1 or less), plus active self-directed home PT. More visits may be necessary when grip strength is a problem, even if range of motion is improved. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

Fracture of carpal bone (wrist) (ICD9 814):

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 16 visits over 10 weeks

Fracture of metacarpal bone (hand) (ICD9 815):

Medical treatment: 9 visits over 3 weeks

Post-surgical treatment: 16 visits over 10 weeks

Fracture of one or more phalanges of hand (fingers) (ICD9 816):

Minor, 8 visits over 5 weeks

Post-surgical treatment: Complicated, 16 visits over 10 weeks

Fracture of radius/ulna (forearm) (ICD9 813):

Medical treatment: 16 visits over 8 weeks

Post-surgical treatment: 16 visits over 8 weeks

Dislocation of wrist (ICD9 833):

Medical treatment: 9 visits over 8 weeks

Post-surgical treatment (TFCC reconstruction): 16 visits over 10 weeks

Dislocation of finger (ICD9 834):

9 visits over 8 weeks

Post-surgical treatment: 16 visits over 10 weeks

Trigger finger (ICD9 727.03):

Post-surgical treatment: 9 visits over 8 weeks

Radial styloid tenosynovitis (de Quervain's) (ICD9 727.04):

Medical treatment: 12 visits over 8 weeks

Post-surgical treatment: 14 visits over 12 weeks

Synovitis and tenosynovitis (ICD9 727.0):

Medical treatment: 9 visits over 8 weeks

Post-surgical treatment: 14 visits over 12 weeks

Mallet finger (ICD9 736.1)

16 visits over 8 weeks

Contracture of palmar fascia (Dupuytren's) (ICD9 728.6):

Post-surgical treatment: 12 visits over 8 weeks

Ganglion and cyst of synovium, tendon, and bursa (ICD9 727.4):

Post-surgical treatment: 18 visits over 6 weeks

Ulnar nerve entrapment/Cubital tunnel syndrome (ICD9 354.2):
Medical treatment: 14 visits over 6 weeks

Post-surgical treatment: 20 visits over 10 weeks

Sprains and strains of wrist and hand (ICD9 842):

9 visits over 8 weeks

Sprains and strains of elbow and forearm (ICD9 841):

Medical treatment: 9 visits over 8 weeks

Post-surgical treatment/ligament repair: 24 visits over 16 weeks

Open wound of finger or hand (ICD9 883):

9 visits over 8 weeks. See also Early mobilization (for tendon injuries).

Pain in joint (ICD9 719.4):

9 visits over 8 weeks

Arthropathy, unspecified (ICD9 716.9):

Post-surgical treatment, arthroplasty/fusion, wrist/finger: 24 visits over 8 weeks

Amputation of thumb; finger (ICD9 885; 886):

Medical treatment: **18 visits over 6 weeks**

Post-replantation surgery: 36 visits over 12 weeks

Amputation of hand (ICD9 887):

Post-replantation surgery: 48 visits over 26 weeks

Work conditioning (See also Procedure Summary entry):

12 visits over 8 weeks

Carpal tunnel syndrome (ICD9 354.0):

Medical treatment: 1-3 visits over 3-5 weeks

Post-surgical treatment (endoscopic): 3-8 visits over 3-5 weeks

Post-surgical treatment (open): 3-8 visits over 3-5 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. 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 Official Disability Guidelines (ODG).

The ODG appears to give some weight to the physical therapist's recommendation. In the case at hand, although the physical therapist issued a letter stating that the physical therapy from November 2008 through January 2009 had shown steady and significant improvement and the goal had been for functional grip strength, the carrier presented the opinion of an orthopedic surgeon, who interpreted the physical therapist's notes and stated that the claimant had already reached the pinch, grip and strength that could be expected. The notes also did not appear to have ever weaned the claimant from 3 weekly sessions to once a week sessions and the claimant still was partaking of 3 weekly sessions. Further, the claimant had already learned home based exercises, had performed them at home and this would be consistent with the recommendations of the ODG.

Based on the evidence presented, the claimant failed to provide evidence based medicine sufficient to contradict the determination of the IRO and the preponderance of the credible evidence is not contrary to 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. The claimant sustained a compensable injury to the left hand that resulted in the amputation of the fourth and fifth fingers.
2. Carrier delivered to Claimant and Provider 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. Left hand occupational therapy sessions 3x wk for 4wks 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 3x wk for 4 wks occupational therapy sessions to the left hand is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to 3x wk for 4 wks occupational therapy sessions to the left hand 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 **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 11th day of May, 2009.

Virginia Rodríguez Gómez
Hearing Officer