

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 August 25, 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 a carpal tunnel release for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by BT, ombudsman.

Respondent/Carrier appeared and was represented by telephone by RJ, attorney.

BACKGROUND INFORMATION

Claimant has a compensable right carpal tunnel injury. Claimant's treating doctor is (Dr. H). She saw Dr. H once and he referred her to (Dr. C). Claimant saw Dr. C for the first and only time on April 7, 2009, and he recommended a right carpal tunnel release. Carrier's initial utilization review agent (URA) refused to preauthorize the requested surgery, citing the Official Disability Guidelines (ODG). The URA, (Dr. S), indicated that Dr. C was contacted and concerns regarding the lack of current electrodiagnostic testing were relayed to him.

Claimant appealed Carrier's denial of the preauthorization request and it was sent to another URA, (Dr. D), an orthopedic surgeon. Dr. D reviewed the medical documentation available and concurred with Dr. S's initial denial of preauthorization. He also relied on the provisions of the ODG. Claimant requested that the Carrier's denial be reviewed by an Independent Review Organization (IRO). The Texas Department of Insurance appointed (IRO) to act as the IRO in this matter. The IRO's physician reviewer is board certified by the American Board of Orthopaedic Surgery, completed a fellowship in Pediatric Orthopaedic Surgery, is a member of the American Academy of Orthopaedic Surgeons and the Pediatric Orthopaedic Society of North America and has been in active practice since 2000. The physician reviewer upheld Carrier's earlier denials of preauthorization for a carpal tunnel release, citing the ODG and noting that the criteria set out in the ODG for a carpal tunnel release had not been met.

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 (Texas Labor Code §408.021). "Health care reasonably required" is defined 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, generally accepted standards of medical practice recognized in the medical community (Texas Labor Code §401.011(22-a)). "Evidence based medicine" means 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 (Texas Labor Code §401.011 (18-a)). In accordance with the above statutory guidance, Rule 137.100 directs health care providers to provide treatment in accordance with the current edition of the ODG and such treatment is presumed to be reasonably required.

With regard to carpal tunnel release surgery, the ODG states, in part:

Recommended after an accurate diagnosis of moderate or severe CTS. Surgery is not generally initially indicated for mild CTS, unless symptoms persist after conservative treatment. See Severity definitions. ... Carpal tunnel syndrome may be treated initially with education, activity modification, medications and night splints before injection is considered, except in the case of severe CTS (thenar muscle atrophy and constant paresthesias in the median innervated digits), but outcomes from carpal tunnel surgery justify prompt referral for surgery in moderate to severe cases. Nevertheless, surgery should not be performed until the diagnosis of CTS is made by history, physical examination and possible electrodiagnostic studies. Symptomatic relief from a cortisone/anesthetic injection will facilitate the diagnosis, ...

ODG criteria for carpal tunnel release surgery are:

ODG Indications for Surgery™ -- Carpal Tunnel Release:

I. Severe CTS, requiring ALL of the following:

A. Symptoms/findings of severe CTS, requiring ALL of the following:

1. Muscle atrophy, severe weakness of thenar muscles
2. 2-point discrimination test > 6 mm

B. Positive electrodiagnostic testing

--- OR ---

II. Mild/moderate CTS, requiring ALL of the following:

A. Symptoms (pain/numbness/paresthesia/impaired dexterity), requiring TWO of the following:

1. Abnormal Katz hand diagram scores
2. Nocturnal symptoms
3. Flick sign (shaking hand)

B. Findings by physical exam, requiring TWO of the following:

1. Compression test
2. Semmes-Weinstein monofilament test
3. Phalen sign
4. Tinel's sign
5. Decreased 2-point discrimination
6. Mild thenar weakness (thumb abduction)

C. Comorbidities: no current pregnancy

D. Initial conservative treatment, requiring THREE of the following:

1. Activity modification \geq 1 month
2. Night wrist splint \geq 1 month
3. Nonprescription analgesia (i.e., acetaminophen)
4. Home exercise training (provided by physician, healthcare provider or therapist)

5. Successful initial outcome from corticosteroid injection trial
(optional)

E. Positive electrodiagnostic testing [note that successful outcomes from injection trial or conservative treatment may affect test results] (Hagebeuk, 2004)

The party appealing an IRO decision has the burden of overcoming that decision by a preponderance of the evidence-based medicine (Rule 133.308(t)). On April 7, 2009, Dr. C determined that Claimant had 5 mm two point discrimination. Surgery is not warranted for severe CTS under the ODG, but Claimant contends that she meets the standard for surgery for mild to moderate CTS. Carrier pointed out that there is no history of abnormal Katz hand diagram scores or flick sign in the medical records and that Claimant has undergone only two of the conservative treatment protocols set forth in the ODG. Claimant has not had activity modification, there is no evidence of home exercise training, and she has not had a corticosteroid injection trial. There is no recent electrodiagnostic testing substantiating the diagnosis of carpal tunnel syndrome.

Claimant offered no expert witness testimony to show that she meets the requisites for carpal tunnel release surgery under the ODG or that there is other evidence based medicine that would tend to show that the IRO decision is incorrect. Without relevant evidence based medicine contrary to the IRO decision, Claimant has failed to meet her burden of proof.

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 sustained a compensable injury while she was the employee of (Employer).
 - C. The Texas Department of Insurance appointed (IRO) to act as the Independent Review Organization in this matter.
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. There is insufficient evidence to show that Claimant meets the criteria set forth in the ODG for carpal tunnel release surgery or that there is other current evidence based medicine showing that surgery at this time is clinically appropriate and considered effective for Claimant's injury.
4. Carpal tunnel release surgery 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 carpal tunnel release surgery is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to carpal tunnel release surgery 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 **FIRST LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Signed this 26th day of August, 2009

KENNETH A. HUCHTON
Hearing Officer