

**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 October 7, 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 a pair of digital binaural hearing aids for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant/Petitioner appeared and was represented by SB, ombudsman.  
Carrier/Respondent appeared and was represented by DO, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable hearing loss injury on \_\_\_\_\_. His present digital type hearing aids were issued in 2006.

In June 2009, Claimant was evaluated by a clinical audiologist who tested Claimant's hearing ability. He found that Claimant's speech discriminations had worsened since his last audiogram. The audiologist has recommended a new set of digital binaural hearing aids which he believes may provide better speech understanding.

Claimant's request for new hearing aids was denied by the Carrier. The reconsideration request was also denied and Claimant requested review by an independent review organization (IRO). The IRO issued a decision on August 5, 2009 upholding the Carrier's denial. Claimant appealed that decision to this medical contested case hearing.

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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

The official disability guidelines (ODG) recommend hearing aids for nerve damage type hearing loss and Claimant's hearing loss is of this type. However, Claimant presently has digital quality type hearing aids that are fully functional. For the Claimant to prevail, he must provide either evidence based medicine showing that the new type of hearing aids are recommended over the ones 3 years old or that if evidence based medicine is not available, then he must show that the new hearing aids are the generally accepted standards of medical practice recognized in the medical community. Claimant has failed to meet either standard in the case.

The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to a 2009 pair of digital binaural hearing aids for the compensable injury of \_\_\_\_\_.

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 (Self-Insured), Employer.
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 IRO decision found that Claimant was not entitled to a 2009 model digital hearing aid for the compensable injury of \_\_\_\_\_.
4. Claimant failed to provide evidence based medicine contrary to the IRO decision.
5. In the absence of evidence based medicine, Claimant failed to show that the 2009 model digital hearing aids were the generally accepted standard of medical practice recognized in the medical community.

6. A pair of digital binaural hearing aids 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 a pair of digital binaural hearing aids for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled a pair of digital binaural hearing aids 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**GT  
(STREET ADDRESS)  
(CITY), TX (ZIP CODE)**

Signed this 12th day of October, 2009.

Donald Woods  
Hearing Officer