

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 21, 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 outpatient right elbow arthrotomy with joint exploration, medial for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by DS, ombudsman. Respondent/Carrier appeared and was represented by JM, adjuster.

BACKGROUND INFORMATION

It is undisputed the Claimant sustained a compensable injury on _____. At that time, Claimant injured her right upper extremity lifting a battery.

Dr. J proposed an outpatient right elbow arthrotomy with joint exploration, medial. This was denied by the Carrier, and submitted for review by the IRO. An adverse determination was upheld by the IRO. In denying the requested procedure, the IRO points out the procedure is not addressed by the ODG, indications for this exploratory surgery are not clear, and there is no medical necessity for the procedure. Testimony from Dr. P reflects the requested procedure is very rare, and not indicated in this patient.

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 ODG does not address the specific treatment procedure in dispute. Dr. J testified he believes the procedure is warranted in this case, but does not know any other doctor in the community that has performed the procedure. Dr. J said he did not know the meaning of "evidence-based medical evidence", he does not know what an "IRO" is, and he is not familiar with the "ODG".

Claimant/Petitioner failed to offer evidence-based medical evidence, or evidence that the procedure is in accordance with generally accepted standards in the medical community, to dispute the findings of the IRO. The preponderance of the evidence is not contrary to the IRO decision.

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. On _____ Claimant sustained a compensable injury.
 - D. The Independent Review Organization determined Claimant should not have the requested treatment.
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. An outpatient right elbow arthrotomy with joint exploration, medial 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 an outpatient right elbow arthrotomy with joint exploration, medial is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to an outpatient right elbow arthrotomy with joint exploration, medial 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **NATIONAL AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

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

Signed this 22nd day of October, 2009.

G. W. Quick
Hearings Officer