

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.

ISSUE

A contested case hearing was held on November 19, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to right hand arthroplasty and fusion of the CMC joint for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by WB, ombudsman. Carrier appeared and was represented by CM, attorney.

BACKGROUND INFORMATION

Claimant is a 53-year-old aircraft fabrication worker. He uses hand tools in his work, and dislocated his right thumb while drilling with a hand drill on _____. Claimant had surgery with Dr. S on the right thumb on September 17, 2007 for a synovectomy, after an MRI showed degenerative changes. Dr. S now proposes additional surgery for fascial arthroplasty and/or fusion. Claimant has had physical therapy following his previous surgery as well as injections but continues to have pain and limitation of use of the right hand due to the thumb problems. Claimant said that he wanted this procedure to reduce the pain he has with use of the right hand, especially in drilling metal plates at work. Carrier had the case reviewed by Dr. M, an board certified orthopedic surgeon. Dr. M stated that the origin of the pain was not clear because the MRI showed scattered degenerative disease, and because an injection at the base of the thumb had failed to relieve the right hand and wrist pain. The reconsideration review was done by Dr. S (2), a board certified orthopedic surgeon, who also recommended denial of the surgery. He listed the degenerative findings in various areas of the hand shown by the MRI, and stated that Claimant had not responded to conservative measures directed at the joint in question. Dr. S (2) felt that the proposed surgery in that area would be unlikely to relieve the pain. On September 28, 2009 the case was reviewed by an IRO physician who upheld the denial. The reviewer was a board certified orthopedic surgeon who based his recommendation on the Official Disability Guides (ODG) as well as medical judgment, clinical experience and expertise in accordance with accepted medical standards. He stated it was unlikely that the proposed surgery would provide symptomatic relief. Dr. S wrote a letter in response that he felt that the surgery was necessary for pain relief. He testified by telephone that he was not familiar with the ODG guidelines for the requested procedure, and based his request on his practice experience and expertise.

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. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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 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."

With regard to the proposed arthroplasty, the ODG provides as follows:

Arthroplasty, finger and/or thumb (joint replacement)

Recommended as indicated below. Prosthetic joint replacement is used to reduce pain and maintain function of the proximal interphalangeal joint. (Pettersson, 2006) In our series, total joint arthroplasty of the thumb CMC joint has proven to be efficacious with improved motion, strength, and pain relief for the treatment of stage III and early stage IV osteoarthritis of the CMC joint in older patients with low activity demands. (Badia, 2006)

Indications for joint replacement of the finger or thumb:

Symptomatic arthritis of the proximal interphalangeal joint with preservation of the collateral ligaments

Sufficient bone support

Intact or at least reconstructable extensor tendons

Contraindications:

Lack of stability, e. g., as a result of rheumatoid arthritis or destruction of the ligaments caused by an accident

Nonreconstructable extensor tendons

Florid or chronic infection

Lack of patient compliance. (Meier, 2007)

Arthrodesis (fusion)

Recommended in severe posttraumatic arthritis of the wrist or thumb or digit after 6 months of conservative therapy. Total wrist arthrodesis is regarded as the most predictable way to relieve the pain of posttraumatic wrist arthritis. Total wrist fusion diminishes pain, but wrist function is sacrificed. Patients may have functional limitations interfering with lifestyle, and total fusion does not always result in complete pain relief. Arthrodesis (fusion) provides a pain-free stable joint with a sacrifice of motion. It may be indicated in young patients in whom heavy loading is likely; in joints with a fixed, painful deformity, instability, or loss of motor; and in the salvage of failed implant arthroplasty. Arthrodesis of the metacarpophalangeal joint of the thumb gives reliable results, with high patient acceptance, but does not result in an entirely normal thumb or hand function. (Wieloch, 2006) (Ellis, 1989) (Lourie, 2001) (Edmunds, 1994) (Adey, 2005) (Rauhaniemi, 2005) (Ghattas, 2005) Postoperative treatment: Plaster splint for 5 days, then early functional treatment. (Marti, 2006).

The Claimant has failed to show that the preponderance of the evidence based medical evidence is contrary to the decision of the IRO. Claimant's expert, Dr. S, failed to address the indications or contraindications of the ODG for the requested procedure, and did not offer any other evidence based medical evidence on this issue.

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).
 - C. Claimant sustained a compensable injury on _____.
 - D. This is a non-network claim.
 - E. The IRO determined that Claimant should not have right hand arthroplasty and fusion of the CMC joint.
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. Right hand arthroplasty and fusion of the CMC joint 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 right hand arthroplasty and fusion of the CMC joint is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to right hand arthroplasty and fusion of the CMC joint 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 EMPLOYER)**, and the name and address of its registered agent for service of process is:

(EMPLOYER NAME)
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 20th day of November, 2009.

Warren E. Hancock, Jr.
Hearing Officer