

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 December 16, 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 an Interferential Unit and a back garment for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by TT, ombudsman.
Respondent/Carrier appeared and was represented by JS, attorney.

BACKGROUND INFORMATION

The claimant sustained a compensable lumbar spine injury for which he underwent a lumbar laminectomy at the L5-S1 level. The claimant is diagnosed with post-laminectomy syndrome and requests an interferential unit and a back garment for symptomatic pain relief, improvement of range of motion and increase local blood circulation. The claimant has had treatment with medications, facet injections and epidural steroid injections. The Independent Review Organization (IRO) upheld the previous adverse determination that the claimant is not entitled to an interferential unit and a back garment stating that the Official Disability Guidelines (ODG) cite them as noncertified items.

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 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 recommend the use of the requested items stating that there has been limited scientific evidence of their efficacy and recommends that therapies should be employed. In fact, the ODG states that there is strong and consistent evidence that lumbar supports were not effective in preventing neck and back pain.

The evidence revealed that the claimant was somewhat noncompliant with taking his medications, which resulted in documentation of increased pain. Although the requesting physician for the requested devices testified as to his reasoning for the request, he agreed and understood that these devices may not be recommended by the ODG and did not provide any evidence based medical evidence in support of the requested devices other than to state that he was doing whatever he could for the relief of his patient's pain. Hence, the medical necessity of the requested devices has not been substantiated.

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).
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. The Petitioner/Claimant did not present evidence based medical evidence to support the need for an interferential unit and a back garment.
4. An Interferential Unit and a back garment 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 Interferential Unit and a back garment is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to an Interferential Unit and a back garment 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 **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST #300
IRVING, TEXAS 75063**

Signed this 22nd day of December, 2009.

Virginia Rodriguez-Gomez
Hearing Officer