

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 March 8, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to levator repair with blepharoplasty and direct browlift of the left eye for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by LD, ombudsman. Respondent/Carrier appeared and was represented by SS, an attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ suffering injuries to his face and left eye. Claimant underwent vitrectomy and lensectomy of the left eye. Claimant continues to suffer from blurred vision and testified that his eyelid hits the contact lens in his left eye which causes constant irritation, pain and redness. No mention of the left eyelid interfering with the contact lens was noted in the request for the proposed procedures as a basis for the requested surgery.

Pre-authorization for the proposed procedure was denied, request for reconsideration denied and a request for review by an IRO was made. The IRO reviewer, a physician board certified in ophthalmology upheld the denial of the requested surgery. In his explanation for his denial he opined that, "the patient is noted to have ptosis of his left upper eyelid after traumatic injury, as is clear from the photos provided. However, he has no specific complaints regarding limitation in his superior visual field from the left eye. Additionally, his Goldman visual field showed only minimal improvement when the lid was mechanically elevated (lid taped) thus indicating that the decrease in overall visual field in the left eye was likely due to problems other than the "droopy" eyelid. The medical necessity for the proposed eyelid procedures was not established." The IRO physician also noted that the requested procedure was not addressed in the Official Disability Guidelines (ODG).

The treating surgeon did not offer testimony or a narrative commenting upon the need for the claimant's surgery nor was any evidence based expert testimony offered on behalf of the claimant.

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 claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. Therefore, claimant has not met the requisite evidentiary standard required to overcome the IRO decision and the preponderance of the evidence is not contrary to the IRO decision that the claimant is not entitled to levator repair with blepharoplasty and direct browlift of the left eye.

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 (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.
2. Carrier delivered to claimant a single document stating the true corporate name of the carrier, and the name and street address of the carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The IRO determined that the requested procedure was not medically necessary and the claimant failed to present evidence based medical evidence sufficient to overcome such opinion.

4. The requested levator repair with blepharoplasty and direct browlift of the left eye 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 levator repair with blepharoplasty and direct browlift of the left eye is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to levator repair with blepharoplasty and direct browlift of the left eye.

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 carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
225 EAST JOHN CARPENTER FREEWAY, SUITE 1300
IRVING, TEXAS 75062-2281**

Signed this 8th day of March, 2010.

Katherine D'Aunno-Buchanan
Hearing Officer