

**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 9, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to arthroplasty of the right third metacarpophalangeal (MCP) joint for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by AC, ombudsman.  
Respondent/Carrier was represented by JB, attorney.

**BACKGROUND INFORMATION**

The Claimant sustained a compensable injury to his right hand while using a power screwdriver on \_\_\_\_\_. Claimant was diagnosed with an extensor hood laceration and tear overlying the middle third metacarpophalangeal (MCP) joint and post-traumatic arthritis. As a result of the compensable injury, Claimant underwent medications, injections and physical therapy to the right hand. The evidence established that Claimant continues to experience pain and stiffness to the third MCP with limited range of motion. Claimant's treating physician has recommended that Claimant undergo arthroplasty of the right third MCP.

The IRO reviewer, a board certified orthopedic surgeon, determined that the requested services did not meet the Official Disability Guidelines (*ODG*). The IRO reviewer noted that the *ODG* recognizes the need for arthroplasty in "older low demand patients with thumb CMC osteoarthritis and/or finger PIP arthritis with collateral ligament preservation."

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* recognizes the use of arthroplasty and states:

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)

The IRO reviewer noted that Claimant did have the documented post-traumatic arthritis of the MP joint of the right hand. However, the reviewer noted that Claimant does not meet the other criteria set out in the *ODG*. In particular, the reviewer opined that the collateral ligaments were not well preserved and would not support this type of procedure. The IRO reviewer concluded that Claimant does not meet the criteria set out in the *ODG*. On the other hand, Claimant's treating physician has recommended arthroplasty of the third MCP based on his own experience and judgment. Claimant's treating physician failed to provide evidence based medicine contrary to the decision of the IRO.

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) and sustained a compensable injury.
  - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of \_\_\_\_\_.
- 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. Claimant failed to present evidence based medicine contrary to the IRO decision.
  - 4. The arthroplasty of the right third metacarpophalangel (MCP) 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 arthroplasty of the right third metacarpophalangel (MCP) joint is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to arthroplasty of the right third metacarpophalangel (MCP) 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 **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, TX 75062-2281**

Signed this 16th day of March, 2010.

Teresa G. Hartley  
Hearing Officer