

MEDICAL CONTESTED CASE HEARING NO 12018
M6-11-34292-01

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 September 28, 2011, 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 a lumbar myelogram with a post CT scan for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant did not appear. Respondent/Carrier appeared and was represented by RG, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury). He underwent a lumbar fusion on April 20, 1995. According to the IRO report, he has continuing pain in both legs, more on the right than left. His current surgeon requested a lumbar myelogram with a post-myelogram CT scan. The study was denied. An IRO board certified orthopedic surgeon upheld the denial and determined Claimant should not have a lumbar myelogram with a post CT scan.

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. 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. (Division Rule 133.308 (t).)

Claimant did not appear for the hearing scheduled for September 28, 2011. A 10 day letter was sent to Claimant on October 4, 2011, offering him an opportunity to request that the hearing be reset to permit him to present evidence on the disputed issue. Claimant responded with a letter dated September 29, 2011, stamped received by the Office Of Injured Employee Counsel, (City) Field Office on October 04, 2011, and hand-delivered to the Division on October 17, 2011, stating he did not wish to pursue this matter at this time.

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 carrier 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 (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Claimant sustained a compensable injury.
 - D. The Independent Review Organization board certified orthopedic surgeon determined Claimant should not have a lumbar myelogram with a post CT scan.
2. The Division sent to Claimant at his address of record with the 10 day letter 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 appear for the September 28, 2011, hearing. He wrote a letter that was received by the Division on October 17, 2011, that he did not wish to pursue this issue at this time.
4. Good cause was not shown for Claimant's failure to appear for the hearing.
5. A lumbar myelogram with a post CT scan is not health care reasonably required for the compensable injury of (Date of Injury).

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 a lumbar myelogram with a post CT scan is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a lumbar myelogram with a post CT scan for the compensable injury of (Date of Injury).

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 **GULF GROUP LLOYDS** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, STE. 620
AUSTIN, TX 78701-3218.**

Signed this 17th day of October, 2011.

KEN WROBEL
Hearing Officer