

MEDICAL CONTESTED CASE HEARING NO 12040  
M6-11-34855-01

**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 begun on July 7, 2011 and concluded on September 12, 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 BHI-2 psychosocial screening for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner appeared pro se by telephone. Claimant appeared and was assisted by SS, ombudsman. Respondent/Carrier appeared and was represented by ARL, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable lumbar injury on (Date of Injury). She had multiple surgeries including a lumbar discectomy at L5-S1 on August 14, 2000 followed by wound debridement on August 26, 2000. Claimant developed pseudoarthrosis and underwent an exploration and fusion revision on May 6, 2002. She then had hardware blocks on July 15, 2009 followed by removal of hardware on September 23, 2009. An EMG test on March 31, 2011 reported bilateral chronic L5 radiculopathy. On April 21, 2011 Dr. KB recommended a surgical extension of her fusion to include L4-5. Dr. B requested a pre-operative BHI-2 psychosocial screening test.

Dr. B's request for a psychosocial screen was reviewed by the Carrier's utilization review agents (URAs) on May 2, 2011 and May 13, 2011. Both URAs denied Dr. B's request noting that screening for pre-operative psychological status involves clinical evaluation by a psychologist and appropriate psychometric testing. Both URAs referenced the Pain Chapter of the Official Disability Guidelines (ODG) as the basis of their opinion.

According to documentary evidence, the Independent Review Organization (IRO) upheld previous adverse determinations concerning the medical necessity of the BHI-2 psychosocial screen. The determination was based on the ODG. The IRO physician reviewer is a board certified orthopedic surgeon. The doctor noted that BHI-2 testing alone is insufficient to provide

pre-surgical psychological clearance and reiterated the need for clinical evaluation by a psychologist and appropriate psychometric testing.

Dr. B appealed the IRO's decision to a Medical Contested Case Hearing.

## **DISCUSSION**

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 making decisions about the care of individual patients. 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 is 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 provides the following for psychological screenings:

"Recommended as an option prior to surgery, or in cases with expectations of delayed recovery. Before referral for surgery, clinicians should consider referral for psychological screening to improve surgical outcomes, possibly including

standard tests such as MMPI (Minnesota Multiphasic Personality Inventory) and Waddell signs. However, the screening should be performed by a neutral independent psychologist or psychiatrist unaffiliated with treating physician/spine surgeon to avoid bias. (Scalzitti, 1997) (Fritz, 2000) (Gaines, 1999) (Gatchel, 1995) (McIntosh, 2000) (Polatin, 1997) (Riley, 1995) (Block, 2001) (Airaksinen, 2006) A recent study concluded that psychological distress is a more reliable predictor of back pain than most diagnostic tests. (Carragee, 2004) The new ACP/APS guideline as compared to the old AHCPR guideline is a bit stronger on emphasizing the need for psychosocial assessment to help predict potentially delayed recovery. (Shekelle, 2008) Two factors from the adapted stress process model, *cognitive appraisal* and *emotional distress*, were identified as significant predictive factors of number of days of absence at 12 months and functional disability at 6 and 12 months. The adapted stress process model suggested that psychological variables act differently according to the variable predicted and to the period of time considered. (Truchon, 2010) The most helpful components for predicting persistent disabling low back pain were maladaptive pain coping behaviors, nonorganic signs, functional impairment, general health status, and presence of psychiatric comorbidities. (Chou, 2010) For more information, see the Pain Chapter and the Stress/Mental Chapter.”

To overcome the IRO’s opinion, Dr. B testified that Claimant needs the BHI-2 psychosocial screen to determine if there are any psychological barriers to her recovery from spine surgery. Dr. B’s opinion in support of the necessity of the proposed psychosocial screen was not based on evidence-based medicine (EBM). Specifically the article referenced by Dr. B was merely a marketing advertisement for the BHI-2 test containing no peer reviewed studies. Dr. B testified that he would administer the test, whereas the ODG states that the testing should be performed by a neutral independent psychologist or psychiatrist unaffiliated with the spine surgeon to avoid bias. The preponderance of the evidence was not contrary to the findings of the IRO. Therefore, the IRO decision is upheld.

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 (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. Claimant sustained a compensable injury on (Date of Injury).

- D. The IRO determined that Claimant is not entitled to a BHI-2 psychosocial screening.
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. A BHI-2 psychosocial screening, to be performed by a non psychologist, 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 BHI-2 psychosocial screening is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to a BHI-2 psychosocial screening 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 **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 12th day of October, 2011.

Judy L. Ney  
Hearing Officer