

MEDICAL CONTESTED CASE HEARING NO 12058  
M6-11-33924-01

**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 January 05, 2012, 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 left carpal tunnel release for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

Claimant failed to appear for the contested case hearing on January 5, 2012, although the Division sent notice to her on November 2, 2011, advising of the date, time and place of the hearing. A 10-day letter was sent to Claimant on January 6, 2012, offering her an opportunity to request that the hearing be reset to permit her to present evidence on the disputed issue. No response was received from Claimant. Claimant had requested this hearing in order to dispute the IRO doctor's denial of the requested left carpal tunnel release.

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).)

Under the Official Disability Guidelines in reference to a carpal tunnel release, the following recommendation is made:

***ODG Indications for Surgery***<sup>™</sup> -- Carpal Tunnel Release:

**I. Severe CTS**, requiring ALL of the following:

A. Symptoms/findings of severe CTS, requiring ALL of the following:

1. Muscle atrophy, severe weakness of thenar muscles
2. 2-point discrimination test > 6 mm

B. Positive electrodiagnostic testing

--- OR ---

**II. Not severe CTS**, requiring ALL of the following:

A. Symptoms (pain/numbness/paresthesia/impaired dexterity), requiring TWO of the following:

1. Abnormal Katz hand diagram scores
2. Nocturnal symptoms
3. Flick sign (shaking hand)

- B. Findings by physical exam, requiring TWO of the following:
  - 1. Compression test
  - 2. Semmes-Weinstein monofilament test
  - 3. Phalen sign
  - 4. Tinel's sign
  - 5. Decreased 2-point discrimination
  - 6. Mild thenar weakness (thumb abduction)
- C. Comorbidities: no current pregnancy
- D. Initial conservative treatment, requiring THREE of the following:
  - 1. Activity modification  $\geq$  1 month
  - 2. Night wrist splint  $\geq$  1 month
  - 3. Nonprescription analgesia (i.e., acetaminophen)
  - 4. Home exercise training (provided by physician, healthcare provider or therapist)
  - 5. Successful initial outcome from corticosteroid injection trial (optional). See *Injections*. [Initial relief of symptoms can assist in confirmation of diagnosis and can be a good indicator for success of surgery if electrodiagnostic testing is not readily available.]
- E. Positive electrodiagnostic testing [note that successful outcomes from injection trial or conservative treatment may affect test results] (Hagebeuk, 2004)

The IRO doctor, a board-certified orthopedic surgeon, opined that the proposed left carpal tunnel release is not indicated as medically necessary based upon the clinical data submitted for review. He further stated that the only examination findings pertinent to the left wrist were from October 29, 2010, at which time Tinel's sign of the median nerve was negative. No other findings consistent with left carpal tunnel syndrome were reported, such as diminished two-point discrimination, flick sign, and thenar atrophy, weakness. There was no documentation of injection or other conservative measures to the left wrist. Accordingly, medical necessity was not established for the left carpal tunnel release.

In order to prevail, a Claimant must supply evidence based medical evidence to support the medical necessity of the treatment being requested. Having failed to appear and present any

evidence based medical evidence, Claimant has not been able to meet her burden of proof that the proposed left carpal tunnel release is medically necessary.

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 admitted to the following facts:
  - A. Venue is proper in the (City) 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), Employer provided workers' compensation insurance through Carrier, The Travelers Indemnity Company.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. The Independent Review Organization board certified orthopedic surgeon determined Claimant should not have a left carpal tunnel release.
2. The Division sent to Claimant at her 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 Exhibit Number 2.
3. Claimant failed to appear for the January 5, 2012, medical contested case hearing, and failed to respond to the Division's 10-day letter offering her an opportunity to have the hearing rescheduled.
4. There was no showing of good cause for Claimant's failure to appear for the medical contested case hearing.
5. Left carpal tunnel release 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) Office.

3. The preponderance of the evidence is not contrary to the decision of the IRO that a left carpal tunnel release is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to a left carpal tunnel release 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 **THE TRAVELERS INDEMNITY COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE CO.  
D/B/A CSC – LAWYERS INCORPORATING SERVICE CO.  
211 EAST 7TH STREET  
STE. 620  
AUSTIN, TX 78701-3218**

Signed this 18th day of January, 2012.

Cheryl Dean  
Hearing Officer