

MEDICAL CONTESTED CASE HEARING NO 12059
M6-12-36219-01

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 with tenoglide and neurawrap for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by NW, ombudsman.
Respondent/Carrier appeared and was represented by WS, attorney.

BACKGROUND INFORMATION

Claimant sustained significant repetitive use injuries to both upper extremities and has endured a dozen surgeries to her wrists, elbows and shoulders. Currently, Claimant contends she needs to undergo a left open carpal tunnel release with tenoglide and neurawrap due to the poor results of the three surgeries she has already had to her left wrist. Carrier disputed the need for this surgery. The IRO doctor, a board certified orthopedic surgeon, upheld the Carrier's denial opining the surgery was not medically necessary.

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 left carpal tunnel release, the following recommendation is made:

ODG Indications for Surgery™ -- 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)

Under the Official Disability Guidelines in reference to the use of NeuraWrap (a collagen implant), the following recommendation is made:

Under study. There are no quality published studies. The NeuraWrap™ nerve protector is an absorbable collagen implant to provide a non-constricting encasement for injured peripheral nerves. Nerve protection could possibly be desirable following decompression of recurrent carpal or cubital tunnel syndrome, to isolate nerves that lie in a highly traumatized wound bed, for nerves that have been partially severed, or for short length nerve injuries.

There is little dispute Claimant and her witnesses were credible and persuasive that she is having significant difficulties with her left wrist, as well as other upper extremity complications, and the present condition of her left wrist has caused her tremendous physical and emotional difficulties in her life. However, under the Act, a claimant must supply evidence based medical opinions or other evidence based medical evidence to support the medical necessity of the treatment being requested. Even Claimant's surgeon who requested the procedure stated in a peer-to-peer discussion he did not think the surgery would likely be of significant benefit but felt it was the only thing he had to offer. Claimant did not provide the required medical opinions or evidence; therefore, Claimant did not meet her burden of proof to establish the left carpal tunnel release with tenoglide and neurawrap is medical treatment that 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 parties stipulated 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 with Federal Insurance Company, Carrier.
 - 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 with tenoglide and neurawrap.
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 left carpal tunnel release with tenoglide and neurawrap 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 with tenoglide and neurawrap 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 with tenoglide and neurawrap 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 **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL
DALLAS, TX 75201.**

Signed this 09th day of January, 2012.

KEN WROBEL
Hearing Officer