

MEDICAL CONTESTED CASE HEARING NO 12089  
M6-11-32069-01

**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 benefit contested case hearing was opened on March 29, 2011, and closed on July 26, 2011, 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 a neurology consult for the compensable injury of Date of Injury?

**PARTIES PRESENT**

Petitioner appeared and was assisted by PSG, ombudsman. Carrier appeared and was represented by WS, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to her lumbar spine on Date of Injury while working at a wholesale nursery. During the first month after the injury, claimant received conservative care from both her chiropractor and physical medicine specialists. She also received physical therapy. Claimant's physicians, including Drs. L and L, believed that the Claimant's symptoms were consistent with a strain injury. Claimant was referred for trigger point injections, but received no relief from them.

An MRI performed on October 21, 2006 found no significant disc herniation or protrusion except for a small area of herniation at L5/S1, normal vertebral bodies, and some disc degeneration in the lower thoracic spine at the T8-9, T9-10 and T10-11. The MRI further diagnosed a compression fracture at T-9 of unknown duration, with no evidence of compression of the spinal cord or nerve root compression. Claimant had Kyphoplasty for the compression fracture at T9. Claimant indicates that she had surgery to her lumbar spine in December, 2008 by Dr. N. Claimant used private insurance for this surgery. Claimant testified that following that surgery she felt good for approximately one year. She is currently experiencing symptoms including shooting pains in her calves, shins, toes, buttocks, and thighs. The treating doctor's office requested a neurology consult. This was denied by the carrier.

A review by an Independent Review Organization (IRO) upheld the carrier's denial of the neurology consult. The IRO denied the request because the submitted clinical information did not mention a referral to a neurologist or any rationale for that referral.

## **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 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 133.208 (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."

Claimant's treating physician, MT M, M.D., supposedly requested a neurology consult; however, in a letter dated May 18, 2011, he indicates that he sees no record of anyone referring claimant for a neurology consult, but believes it would be appropriate because of her chronic pain. Dr. M did not give specific reasons why the neurology consult was necessary or reference evidence-based medicine in support of the claimant's position. Health care reasonably required under the Texas Workers' Compensation Act must be evaluated based on evidence based medicine. In this case, the IRO decision evaluated the health care request in view of evidence-based medicine. The preponderance of the evidence is not contrary to the IRO decision.

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).
  - C. On Date of Injury, claimant sustained a compensable injury.
  - D. On Date of Injury, the employer provided workers' compensation insurance through Argonaut Insurance Company, carrier.
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. There was conflicting evidence that the claimant's treating doctor requested a referral for a neurology consult.
4. The preponderance of the evidence is not contrary to the decision of the IRO that a neurology consult is not reasonable and necessary health care service 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 Independent Review Organization (IRO) that claimant is not entitled to a neurology consult for the compensable injury of Date of Injury.

## **DECISION**

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that claimant is not entitled to a neurology consult 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 **ARGONAUT INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**NATIONAL REGISTERED AGENTS, INC.  
16055 SPACE CENTER BLVD., SUITE 235  
HOUSTON, TEXAS 77062-6212**

Signed this 17th day of May, 2011.

Carolyn Cheu Mobley  
Hearing Officer