

MEDICAL CONTESTED CASE HEARING NO. 12099
M6-12-37911-01

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 April 10, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to surgery for left ankle hardware removal for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by MS, attorney.

Respondent/Carrier appeared and was represented by JF, attorney.

BACKGROUND INFORMATION

The claimant injured her left ankle on (Date of Injury) when she was crossing a parking lot, stepped on some uneven pavement, and fell to the ground. She has had approximately a dozen surgeries to her left ankle since the date of injury. The most recent insertion of hardware occurred on October 1, 2010, at which time other hardware was concurrently removed. At present, most of the hardware formerly inserted has been removed, and only three screws remain.

The IRO determined on November 30, 2011 that the claimant should not have surgery to remove hardware in the left ankle, relying on the ODG for the determination. Specifically, the IRO reviewer states that the ODG does not recommend removal of symptomatic hardware and that there is no evidence that the hardware in this case is causing the symptoms. Also, a lack of physical examination and radiographic evidence is cited as reasons for the denial.

The claimant is still in pain, which she and her treating physicians attribute to a lateral screw that is covered by a "halo". Dr. P, who performed the surgeries, and Dr. G who evaluated the claimant and provided a second opinion, concur that it would be easy, appropriate, and at least partially curative to remove the lone screw. Dr. G noted that the claimant's ankle fusion has healed well and that there is no infection or nonunion, factors the ODG cite as reasons not to remove hardware. He attributes the claimant's pain symptoms to a prominent screw head on the lateral side of the ankle and concludes that it is reasonable to proceed to hardware

removal. Nerve conduction studies that revealed abnormal results were performed on January 25, 2012.

"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 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 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.""

The ODG states, in relevant part pertaining to hardware implant removal (fracture fixation):

Not recommend the routine removal of hardware implanted for fracture fixation, except in the case of broken hardware or persistent pain, after ruling out other causes of pain such as infection and nonunion. Not recommended solely to protect against allergy, carcinogenesis, or metal detection. Although hardware removal is commonly done, it should not be considered a routine procedure. The decision to remove hardware has significant economic implications, including the costs of the procedure as well as possible work time lost for postoperative

recovery, and implant removal may be challenging and lead to complications, such as neurovascular injury, refracture, or recurrence of deformity. Current literature does not support the routine removal of implants to protect against allergy, carcinogenesis, or metal detection. (Busam, 2006) Despite advances in metallurgy, fatigue failure of hardware is common when a fracture fails to heal. Revision procedures can be difficult, usually requiring removal of intact or broken hardware. (Hak, 2008) Following fracture healing, improvement in pain relief and function can be expected after removal of hardware in patients with persistent pain in the region of implanted hardware, after ruling out other causes of pain such as infection and nonunion. (Minkowitz, 2007) The routine removal of orthopaedic fixation devices after fracture healing remains an issue of debate, but implant removal in symptomatic patients is rated to be moderately effective. Many surgeons refuse a routine implant removal policy, and do not believe in clinically significant adverse effects of retained metal implants. Given the frequency of the procedure in orthopaedic departments worldwide, there is an urgent need for a large randomized trial to determine the efficacy and effectiveness of implant removal with regard to patient-centred outcomes. (Hanson, 2008)

The ODG states that hardware removal can be recommended when there is persistent pain, the origin of which has been determined not to be infection or nonunion. There is no evidence of infection, allergies, carcinogenesis, metal detection, or nonunion in this case. The preponderance of the medical evidence and the ODG are contrary to the decision of the IRO. The claimant is entitled to surgery for removal of hardware in the left ankle.

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) East 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. The employer provided workers' compensation coverage on (Date of Injury) through Ace American Insurance Company, the Carrier.
 - D. The claimant sustained a compensable injury on (Date of Injury).
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. Surgery for left ankle hardware removal is 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) East Field Office.
3. The preponderance of the evidence is contrary to the decision of the IRO that surgery for left ankle hardware removal is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to left ankle hardware removal for the compensable injury of (Date of Injury).

ORDER

Carrier is 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 **ACE AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 10th day of April, 2012.

Robert Greenlaw
Hearing Officer