

MEDICAL CONTESTED CASE HEARING NO. 12100
M6-12-37610-01

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 11, 2012 to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to a pair of digital binaural behind-the-ear hearing aids and one hearing aid examination for the compensable injury of (Date of Injury), and
2. Did Petitioner timely appeal the Independent Review Organization's denial of the requested medical equipment?

PARTIES PRESENT

Claimant appeared, and was assisted by Ombudsman RB; Carrier appeared, and was represented by Attorney RL. Petitioner appeared on his own behalf.

BACKGROUND INFORMATION

Claimant sustained a compensable noise-induced hearing loss injury, and has been using the hearing aids previously approved by Carrier. However, Claimant noted that his hearing has deteriorated over the last eighteen months, and that his directional hearing ability poses a safety hazard at his place of employment.

ML, Claimant's audiologist and provider, confirmed Claimant's concerns regarding workplace safety, noting that the digital hearing aids that are the subject of this decision can be adjusted so as to improve Claimant's directional hearing, thus enabling Claimant to identify the direction of a potential hazard. The witness further observed that since one's ear canals enlarge with age, Claimant's existing hearing aids no longer fit him properly, and new ones therefore are necessary

Mr. L acknowledged that the Independent Review Organization's decision was sent to him on November 18, 2011, but that he did not dispute it until December 29, 2011.

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(22-a) 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(18-a) 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, and 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. 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 [a party] 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."

With regard to hearing aids, the ODG states as follows:

Recommended as indicated below. Hearing aids are recommended for any of the following:

- (1) Conductive hearing loss unresponsive to medical or surgical interventions.
(Conductive hearing loss involves the outer and middle ear and is due to mechanical or physical blockage of sound. Usually, conductive hearing loss can be corrected medically or surgically.)
- (2) Sensorineural hearing loss. (Sensorineural or "nerve" hearing loss involves damage to the inner ear or the 8th cranial nerve. It can be caused by aging, prenatal or birth-

related problems, viral or bacterial infections, heredity, trauma, exposure to loud noises, the use of certain drugs, fluid buildup in the middle ear, or a benign tumor in the inner ear.) or
(3) Mixed hearing loss (conductive hearing loss coupled with sensorineural hearing loss).
(Cigna, 2006) (Chisolm, 2007)

According to the above excerpt from the ODG, it appears to be reasonable and necessary to require Carrier to provide the recommended hearing aids, particularly in light of Mr. L's testimony regarding proper fit. However, it is clear that Petitioner's appeal of the IRO's decision was untimely,¹ and a decision in favor of Carrier accordingly must be entered as to the sole issue presented for resolution herein.

Even though all the evidence presented may not have been discussed in detail, it was considered; the Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. On (Date of Injury), Claimant was employed by the (Employer), Employer.
2. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance issued by the Pacific Employers Insurance Company, Carrier.
3. On (Date of Injury), Claimant's residence was located within seventy-five miles of the (City) office of the Texas Department of Insurance, Division of Workers' Compensation.
4. 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 1.
5. On (Date of Injury), Claimant sustained damage or harm to the physical structure of his body while he was within the course and scope of his employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.
7. Petitioner received the IRO's decision on November 18, 2011.
8. Petitioner appealed the IRO's adverse decision on December 29, 2011.
9. Petitioner's appeal of the adverse IRO decision was not made in conformity with Division Rule 133.308(t).

¹ Rule 133.308(t).

10. A pair of digital, binaural, behind-the-ear hearing aids and one hearing aid examination is not health care reasonably required for Claimant's 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. Petitioners appeal of the adverse IRO decision was untimely.
4. The preponderance of the evidence-based medicine is not contrary to the decision of the Independent Review Organization that a pair of digital, binaural, behind-the-ear hearing aids and one hearing aid examination is not health care reasonably required for Claimant's compensable injury of (Date of Injury).

DECISION

Since Petitioner's appeal of the IRO decision was untimely, it must be determined that Claimant is not entitled to a pair of digital, binaural, behind-the-ear hearing aids and one hearing aid examination his 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 **PACIFIC EMPLOYERS INSURANCE COMPANY**. The name and address of Carrier's registered agent for service of process is:

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

Signed this 17th day of April, 2012.

Ellen Vannah
Hearing Officer