

MEDICAL CONTESTED CASE HEARING NO. 12126
M6-12-38043-01

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 July 25, 2012, to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to Celebrex for the compensable injury of (Date of Injury)?
2. Did Claimant timely file her appeal of the IRO decision that Claimant is not entitled to Celebrex for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by DM, ombudsman.

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

BACKGROUND INFORMATION

On (Date of Injury), Claimant's vehicle was carjacked and she was knocked back to the ground, injuring her left knee. She eventually underwent an arthroscopy of the knee. Since that time her surgeon has been treating her with Hyalgan injections on an as needed basis and a daily prescription of Celebrex. Carrier disputed the continued use of Celebrex. Carrier's URA doctors opined the continued long-term use of Celebrex was not supported by the evidence-based medical literature. The IRO doctor agreed with the Carrier's doctors. Claimant requested a medical contested case hearing to overturn the IRO decision.

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 Celebrex, the following recommendation is made:

Celebrex® is the brandname for celecoxib, and it is produced by Pfizer. Celecoxib is a non-steroidal anti-inflammatory drug (NSAID) that is a COX-2 selective inhibitor, a drug that directly targets COX-2, an enzyme responsible for inflammation and pain. See Anti-inflammatory medications. See NSAIDs (non-steroidal anti-inflammatory drugs) for specific patient decision-making criteria. Unlike other NSAIDs, celecoxib does not appear to interfere with the antiplatelet activity of aspirin and is bleeding neutral when patients are being considered for surgical intervention or interventional pain procedures.

Under the Official Disability Guidelines in reference to anti-inflammatories, the following recommendation is made:

Anti-inflammatories are the traditional first line of treatment, to reduce pain so activity and functional restoration can resume, but long-term use may not be warranted. (Van Tulder-Cochrane, 2000) A comprehensive review of clinical trials on the efficacy and safety of drugs for the treatment of low back pain concludes that available evidence supports the effectiveness of non-selective

nonsteroidal anti-inflammatory drugs (NSAIDs) in acute and chronic low back pain, of muscle relaxants in acute low back pain, and of antidepressants in chronic low back pain. (Schnitzer, 2004) See also Nonprescription Medications. COX-2 inhibitors (e.g., Celebrex) may be considered if the patient has a risk of GI complications, but not for the majority of patients. Generic NSAIDs and COX-2 inhibitors have similar efficacy and risks when used for less than 3 months, but a 10-to-1 difference in cost. (Rate of overall GI bleeding is 3% with COX-2's versus 4.5% with ibuprofen.) (Homik, 2003)

Under the Official Disability Guidelines in reference to NSAIDs, specific drug list & adverse effects, the following recommendation is made:

Selective COX-2 NSAIDs: Celecoxib (Celebrex®) is the only available COX-2 in the United States. No generic is available. *Mechanism of Action:* Inhibits prostaglandin synthesis by decreasing cyclooxygenase-2 (COX-2). At therapeutic concentrations, cyclooxygenase-1 (COX-1) is not inhibited. In animal models it works as an anti-inflammatory, analgesic, and antipyretic. It does not have an anti-platelet effect and is not a substitute for aspirin for cardiac prophylaxis. *Use:* Relief of the signs and symptoms of osteoarthritis, rheumatoid arthritis, ankylosing spondylitis, and treatment of acute moderate pain.

In this case, Claimant is a very credible lady. That Celebrex helps her is not the issue. Claimant does not have an expert medical opinion, supported by evidence-based medicine, to support the long-term use of Celebrex, for which studies indicate long term use may not be warranted. Claimant's last opinion supporting her use of Celebrex was made by Dr. B, Carrier's RME doctor, on September 26, 2006. The IRO report notes Claimant has had the continued use of Celebrex at the direction of her surgeon since the surgery, but there are no medical records or expert medical opinions in evidence to support the long-term use of this medication. Claimant did not meet her burden of proof.

As for the late filing of the appeal, Claimant is credible she did not receive the IRO report until late January 2012 and contacted the Division within a couple of days of receiving the IRO opinion so she could dispute the decision. She filed her appeal with the Division on February 02, 2012.

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), Employer.
 - C. On (Date of Injury), Claimant sustained a compensable injury.
 - D. On (Date of Injury), Employer provided workers' compensation insurance with Travelers Indemnity Company.
 - E. The Independent Review Organization board certified orthopedic surgeon determined Claimant should not have Celebrex.
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. Celebrex is not health care reasonably required for the compensable injury of (Date of Injury).
 4. Claimant did not receive her copy of the IRO decision until late January 2012, after she called the Texas Department of Insurance for a copy of the decision.
 5. Claimant filed her appeal of the IRO decision with the Division on February 02, 2012.

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 IRO that Celebrex is not health care reasonably required for the compensable injury of (Date of Injury).
4. Claimant timely filed her appeal of the IRO decision that Claimant is not entitled to Celebrex for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to Celebrex for the compensable injury of (Date of Injury). Claimant timely filed her appeal of the IRO decision that Claimant is not entitled to Celebrex 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 **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY

211 EAST 7TH STREET, SUITE 620

AUSTIN, TX 78701-3218.

Signed this 25th day of July, 2012.

KEN WROBEL
Hearing Officer