

MEDICAL CONTESTED CASE HEARING NO. 12132  
M6-12-38938-01

**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 August 12, 2012, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to bilateral lumbar hardware blocks at L3/4 and L4/5 for the compensable injury of (Date of Injury)?
2. Did Claimant timely file a request for a Medical Contested Case Hearing (DWC-45a)?

**PARTIES PRESENT**

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

Respondent/Self-Insured appeared and was represented by RS, attorney.

**OFFICIAL NOTICE**

Official notice was taken of the February 2012 calendar.

**BACKGROUND INFORMATION**

On (Date of Injury), Claimant injured his back lifting concrete blocks. He had a three level fusion. Ultimately, he has had three surgeries. Currently, as Claimant explained, his neurosurgeon thinks the hardware at the fusion site has been encased in scar tissue and is causing his severe low back pain. Claimant does not want to use prescription medications anymore due to just getting off of them. He tried a medrol dose pack which caused shingles to develop. He testified physical therapy is not working. A rhizotomy did not work. His neurosurgeon is recommending bilateral lumbar hardware blocks at L3/4 and L4/5 as a diagnostic tool to determine if the hardware in his back is the pain generator. This result will determine what his doctor will recommend next. The hardware blocks were denied and ultimately were reviewed by an IRO board certified neurosurgeon. The IRO doctor determined the blocks were not medically reasonable. Claimant is disputing 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 bilateral lumbar hardware blocks at L3/4 and L4/5, the following recommendation is made:

Recommended only for diagnostic evaluation of failed back surgery syndrome. This injection procedure is performed on patients who have undergone a fusion with hardware to determine if continued pain is caused by the hardware. If the steroid/anesthetic medication can eliminate the pain by reducing the swelling and inflammation near the hardware, the surgeon may decide to remove the patient's hardware. (Guyer, 2006)

The IRO doctor stated Claimant's neurosurgeon "has on several occasions, been denied approval for removal of the prior hardware." There is no evidence of this in these denials in the admitted records. He also noted that "there has been no demonstrable instability or any documented testing, etc., that the hardware is painful. The hardware is in place radiographically and the fusion is solid." There is nothing in the paragraph from the Official Disability Guidelines that requires prior requests for removal of the hardware. It also does not note demonstrable instability or whether the fusion is solid is required. The Official Disability Guidelines says these blocks are to be used as a diagnostic evaluation for failed back syndrome and the injection is performed on patients who have undergone fusions with hardware to determine if the hardware is causing the pain.

Claimant provided a June 14, 2012, medical report from his neurosurgeon, but medical records received after the IRO decision cannot be used to make a determination in a medical contested case hearing.

The Official Disability Guidelines state this is a diagnostic tool to determine if the hardware is the cause of pain. It does not say it is to be used when there is a failed back syndrome, as inferred by the URA doctors and the IRO doctor. On October 21, 2011, Claimant's neurosurgeon gives an impression stating "possible painful lumbar instrumentation." He explains in his December 12, 2011, letter there was peri-incisional pain which is the area of the lumbar instrumentation. One of the URA doctors infers since there is also sacroiliac pain, this procedure should not be used. This is not in the Official Disability Guidelines.

Based on a careful review of the evidence presented in the hearing, Claimant met his burden of overcoming the IRO decision by a preponderance of the evidence-based medicine. Claimant's doctor's proposed procedure in this case is based on the Official Disability Guidelines and the evidence revealed that Claimant meets the necessary criteria for treatment listed in the Official Disability Guidelines. The preponderance of the evidence-based medicine is contrary to the IRO decision.

As for timely filing, Claimant received the IRO report on January 30, 2012. Twenty days later would have been February 19, 2012. That date was a Sunday. The next day was Monday, February 20, 2012. That was President's Day, a state holiday. Claimant filed his request for a medical contested case hearing on Tuesday, February 21, 2012. Claimant filed his request timely.

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), Employer provided workers' compensation insurance as a Self-Insurer.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. The IRO board certified neurosurgeon determined Claimant should not have bilateral lumbar hardware blocks at L3/4 and L4/5.
2. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured, and the name and street address of Self-Insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Bilateral lumbar hardware blocks at L3/4 and L4/5 is health care reasonably required for the compensable injury of (Date of Injury).
4. Claimant received the IRO report by mail on January 30, 2012.
5. Claimant filed his request for a medical contested case hearing on February 21, 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 contrary to the decision of the IRO that bilateral lumbar hardware blocks at L3/4 and L4/5 is not health care reasonably required for the compensable injury of (Date of Injury).
4. Claimant timely filed a request for a Medical Contested Case Hearing (DWC-45a).

## **DECISION**

Claimant is entitled to bilateral lumbar hardware blocks at L3/4 and L4/5 for the compensable injury of (Date of Injury). Claimant timely filed a request for a Medical Contested Case Hearing (DWC-45a).

## **ORDER**

Self-Insured 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 **SELF-INSURED** and the name and address of its registered agent for service of process is

**S C**  
**(ADDRESS)**  
**CITY HALL**  
**(CITY), TX**

Signed this 24<sup>th</sup> day of August, 2012.

**KEN WROBEL**  
Hearing Officer