

MEDICAL CONTESTED CASE HEARING NO. 13043

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 January 16, 2013, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO orthopedic surgeon that Claimant is not entitled to arthrodesis fusion of the right wrist with grafting for the compensable injury of (Date of Injury)?

PARTIES PRESENT

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

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

BACKGROUND INFORMATION

Claimant sustained an injury to her right hand/wrist when a lid from an insert machine fell on the wrist. She sustained a fracture. She has undergone a carpal tunnel release, cubital tunnel injection and Darrach's surgical procedure with some post-surgical physical therapy in an effort to relieve the pain. Her surgeon, JS, M.D., is now recommending an STT (scaphoid/triquetrum/trapezoid) fusion to relieve pressure from the lunate bone. This has been denied by the Carrier. The IRO doctor agreed with the denial.

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 arthrodesis fusion of the right wrist with grafting, the following recommendation is made:

Recommended in severe posttraumatic arthritis of the wrist or thumb or digit after 6 months of conservative therapy. Total wrist arthrodesis is regarded as the most predictable way to relieve the pain of posttraumatic wrist arthritis. Total wrist fusion diminishes pain, but wrist function is sacrificed. Patients may have functional limitations interfering with lifestyle, and total fusion does not always result in complete pain relief. Arthrodesis (fusion) provides a pain-free stable joint with a sacrifice of motion. It may be indicated in young patients in whom heavy loading is likely; in joints with a fixed, painful deformity, instability, or loss of motor; and in the salvage of failed implant arthroplasty. Arthrodesis of the metacarpophalangeal joint of the thumb gives reliable results, with high patient acceptance, but does not result in an entirely normal thumb or hand function. (Wieloch, 2006) (Ellis, 1989) (Lourie, 2001) (Edmunds, 1994) (Adey, 2005) (Rauhaniemi, 2005) (Ghattas, 2005)

An IRO decision does not carry presumptive weight. Rule 133.308(s) states, "In a division Contested Case Hearing, 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." In this case, Claimant relied upon Dr. S's testimony. He testified the MRI he was relying upon indicated a complete loss of cartilage at the joints he is wanting to fuse and that by definition is severe arthritis, i.e. a complete loss. The MRI findings dated January 25, 2012, indicate "thinning and irregularity with possible complete loss of cartilage along the dorsal aspect of the proximal triquetrum." The CT arthrogram dated April 25, 2012, notes there is cartilage loss at

the lunate and triquetrum. Claimant has undergone much more than six months of conservative therapy and the diagnostic testing indicates loss of cartilage, i.e. severe posttraumatic arthritis, as explained by Dr. S. Additionally, Dr. S testified credibly he relied upon Green's textbook of hand surgery, which he testified was the gold standard. He testified Green's explains this STT fusion specifically and for the reasons involved in Claimant's condition. Claimant provided expert medical evidence in support of her position on the necessity of the proposed procedure in the form of Dr. S's testimony and its foundation in evidence-based medicine. Claimant established the necessity of the proposed surgery by a preponderance of evidence-based medical evidence and, therefore, she has met her burden of proof in this case.

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 with Middlesex Insurance Company, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The IRO board certified orthopedic surgeon determined Claimant should not have an arthrodesis fusion of the right wrist with grafting.
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. Arthrodesis fusion of the right wrist with grafting 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) Field Office.

3. The preponderance of the evidence is contrary to the decision of the IRO orthopedic surgeon that arthrodesis fusion of the right wrist with grafting is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to arthrodesis fusion of the right wrist with grafting 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 **MIDDLESEX INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL
DALLAS, TX 75201.**

Signed this 17th day of January, 2013.

KEN WROBEL
Hearing Officer