

MEDICAL CONTESTED CASE HEARING NO. 13108

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.

ISSUE

A contested case hearing was held on June 20, 2013 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to Arthrodesis, anterior interbody fusion at level C4-5 including disc space preparation, discectomy, osteophyctectomy and decompression of spinal cord and/or nerve roots; cervical below C2 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by JR, ombudsman.

Carrier appeared and was represented by RJ, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: None

For Carrier: None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2

Claimant's Exhibits C-1 through C-8

Carrier's Exhibits CR-A through CR-M

BACKGROUND INFORMATION

Claimant sustained a compensable injury when a twenty-five pound container fell from an overhead shelf hitting her in the neck and shoulder area. She has had two prior fusion surgeries

at the C6-7 and C5-6 levels of the cervical spine. Her doctor has recommended a third fusion surgery at the C4-5 adjacent level.

Dr. WDB has recommended the fusion surgery at the C4-5 level of the cervical spine that is the subject of this hearing. He relies on a cervical MRI that shows a significant stenosis adjacent to the prior fusion. He provides a diagnosis of adjacent segment degeneration with resultant severe cervical stenosis at C4-5. He recommends surgery to prevent myelopathy and or paralysis.

The Carrier has denied Claimant's request for fusion surgery noting that Claimant has had two prior fusion surgeries in the past. Claimant has appealed the Carrier's decision to deny surgery to an Independent Review Organization (IRO). The IRO decision was to uphold the Carrier's denial based on a finding that Claimant has not met the criteria set out in the Official Disability Guidelines (ODG). Claimant has requested this Contested Case Hearing to review the decision of the IRO.

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 Official Disability Guidelines (ODG). Also, in accordance with Division Rule 133.308(s), "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 division 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 recommends an evaluation of an anterior cervical fusion under the criteria set out for a discectomy/laminectomy. The following criteria need to be addressed prior to surgery:

- A. There must be evidence of radicular pain and sensory symptoms in a cervical distribution that correlate with the involved cervical level or presence of a positive Spurling test.
- B. There should be evidence of motor deficit or reflex changes or positive EMG findings that correlate with the cervical level. Note: Despite what the Washington State guidelines say, ODG recommends that EMG is optional if there is other evidence of motor deficit or reflex changes. EMG is useful in cases where clinical findings are unclear, there is a discrepancy in imaging, or to identify other etiologies of symptoms such as metabolic (diabetes/thyroid) or peripheral pathology (such as carpal tunnel). For more information, see EMG.
- C. An abnormal imaging (CT/myelogram and/or MRI) study must show positive findings that correlate with nerve root involvement that is found with the previous objective physical and/or diagnostic findings. If there is no evidence of sensory, motor, reflex or EMG changes, confirmatory selective nerve root blocks may be substituted if these blocks correlate with the imaging study. The block should produce pain in the abnormal nerve root and provide at least 75% pain relief for the duration of the local anesthetic.
- D. Etiologies of pain such as metabolic sources (diabetes/thyroid disease) non-structural radiculopathies (inflammatory, malignant or motor neuron disease), and/or peripheral sources (carpal tunnel syndrome) should be addressed prior to cervical surgical procedures.
- E. There must be evidence that the patient has received and failed at least a 6-8 week trial of conservative care.

The IRO reviewer found that the above ODG requirements for surgery have not been met. Dr. B, the doctor recommending surgery, failed to address the ODG requirements or any other evidence based medicine criteria. The preponderance of the medical evidence is not contrary to the IRO decision and Claimant is not entitled to an anterior cervical fusion surgery.

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 Liberty Mutual Insurance Company, Carrier.
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. Claimant sustained a compensable injury on (Date of Injury).
4. Claimant has had two prior cervical fusion surgeries with the last surgery being on January 12, 2009.
5. Dr. B recommended anterior cervical fusion surgery at the C4-5 level on January 15, 2013 with the justification being that it was necessary to prevent myelopathy and/or paralysis.
6. The IRO decision upheld the Carrier's denial of surgery with the justification being that the C4-5 level of the cervical spine had not been properly identified as the pain generator in accordance with the criteria set out in the ODG.
7. An anterior cervical fusion at the C4-5 level is not 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 not contrary to the decision of the IRO that Arthrodesis, anterior interbody fusion at level C4-5 including disc space preparation, discectomy, osteophyctomy and decompression of spinal cord and/or nerve roots; cervical below C2 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to Arthrodesis, anterior interbody fusion at level C4-5 including disc space preparation, discectomy, osteophyctectomy and decompression of spinal cord and/or nerve roots; cervical below C2 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 **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
211 EAST 7TH STREET SUITE 620
AUSTIN, TX 78701**

Signed this 27th day of June, 2013.

Donald E. Woods
Hearing Officer