

MEDICAL CONTESTED CASE HEARING NO. 14010

**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 October 2, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to a lumbar laminectomy at L3-4 and L4-5 for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

The petitioner/claimant appeared and was represented by LS, attorney. The respondent/carrier appeared and was represented by MD, attorney. Appearing on behalf of the employer was LK.

**EVIDENCE PRESENTED**

Witnesses for Claimant/Petitioner: Claimant.

Witnesses for Carrier/Respondent: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1A, HO-1B and HO-2.

Evidence for Claimant/Petitioner: Exhibits CL-1 through CL-17.

Evidence for Carrier/Respondent: Exhibits CR-A through CR-I.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on (Date of Injury) when he felt a burning pain in his back as he attempted to unload ramps from a truck. He was initially seen at (Healthcare Provider), but referred to Dr. RJ, orthopedic surgeon. Claimant was treated with one nerve root block without relief. Dr. J recommended a lumbar laminectomy at L3-4 and L4-5. Preauthorization was denied by utilization review because it was determined that Claimant's pain generators had not been adequately identified. An Independent Review Organization (IRO)

assessment was requested. Beckett Systems was appointed to act as IRO by the Texas Department of Insurance.

A neurosurgeon was the reviewer through Beckett Systems. The reviewer upheld the Carrier denial of the requested surgery because the Claimant has had insufficient conservative treatment for his lumbar pain. The reviewer specifically mentioned a lack of physical therapy and insufficient determination of pain generators. It was noted that claimant did not respond to prior nerve root blocks and additional nerve root blocks were not attempted. Further, the clinical documentation did not meet the Official Disability Guidelines recommendations.

## **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 (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. 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 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."

On the date of this medical contested case hearing, the ODG provides the following with regard to a lumbar laminectomy:

Recommended for lumbar spinal stenosis. For patients with lumbar spinal stenosis, surgery (standard posterior decompressive laminectomy alone, without discectomy) offered a significant advantage over nonsurgical treatment in terms of pain relief and functional improvement that was maintained at 2 years of follow-up, according to a new SPORT study. Discectomy should be reserved for those conditions of disc herniation causing radiculopathy. Laminectomy may be used for spinal stenosis secondary to degenerative processes exhibiting ligament hypertrophy, facet hypertrophy, and disc protrusion, in addition to anatomical derangements of the spinal column such as tumor, trauma, etc. (Weinstein, 2008) (Katz, 2008) This study showed that surgery for spinal stenosis and for disc herniation were not as successful as total hip replacement but were comparable to total knee replacement in their success. Pain was reduced to within 60% of normal levels, function improved to 65% normal, and quality of life was improved by about 50%. The study compared the gains in quality of life achieved by total hip replacement, total knee replacement, surgery for spinal stenosis, disc excision for lumbar disc herniation, and arthrodesis for chronic low back pain. (Hansson, 2008) A comparison of surgical and nonoperative outcomes between degenerative spondylolisthesis and spinal stenosis patients from the SPORT trial found that fusion was most appropriate for spondylolisthesis, with or without listhesis, and decompressive laminectomy alone most appropriate for spinal stenosis. (Pearson, 2010) In patients with spinal stenosis, those treated surgically with standard posterior decompressive laminectomy showed significantly greater improvement in pain, function, satisfaction, and self-rated progress over 4 years compared to patients treated nonoperatively, and the results in both groups were stable between 2 and 4 years. (Weinstein, 2010) Comparative effectiveness evidence from SPORT shows good value for standard posterior laminectomy after an imaging-confirmed diagnosis of spinal stenosis [as recommended in ODG], compared with nonoperative care over 4 years. (Tosteson, 2011) Decompressive surgery (laminectomy) is more effective for lumbar spinal stenosis than land based exercise, but given the risks of surgery, a self-management program with exercise prior to consideration of surgery is also supported. (Jarrett, 2012) Laminectomy is a surgical procedure for treating spinal stenosis by relieving pressure on the spinal cord. The lamina of the vertebra is removed or trimmed to widen the spinal canal and create more space for the spinal nerves. See also Discectomy/laminectomy for surgical indications, with the exception of confirming the presence of radiculopathy.

At the Contested Case Hearing, Claimant provided merely a brief email by Dr. J, explaining why he disagrees with the designated doctor. Dr. J indicates that Claimant requires the surgery because of his disc herniations and spinal stenosis; however, he does not address the specific concerns of the IRO reviewer. Claimant failed to provide evidence-based medicine in support of his requested surgery. Based on the evidence presented, the Claimant did not meet his burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence and is not entitled to a lumbar laminectomy at L3-4 and L4-5 for the compensable injury of (Date of Injury).

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 Workers' Compensation Division of the Texas Department of Insurance.
  - B. On (Date of Injury), Claimant was the employee of the (Employer).
  - C. On (Date of Injury), Claimant sustained a compensable injury.
  - D. On (Date of Injury), Employer was a self-insured governmental entity for the purpose of workers' compensation.
2. The Carrier delivered to the Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Beckett Systems was appointed to act as Independent Review Organization by the Texas Department of Insurance.
4. The IRO determined that the Claimant was not entitled to a lumbar laminectomy at L3-4 and L4-5 for the compensable injury of (Date of Injury).
5. Claimant did not provide evidence-based medical evidence in support of his requested treatment.
6. A lumbar laminectomy at L3-4 and L4-5 is not health care reasonable required for the compensable injury of (Date of Injury).

## CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 Independent Review Organization (IRO) that the Claimant is not entitled to a lumbar laminectomy at L3-4 and L4-5 for the compensable injury of (Date of Injury).

## DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a lumbar laminectomy at L3-4 and L4-5 for the compensable injury of (Date of Injury).

## ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. 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:

**SELF-INSURED  
(STREET ADDRESS)  
(CITY), TEXAS (ZIP CODE)**

Signed this 4<sup>th</sup> day of October, 2013.

Carolyn Cheu Mobley  
Hearing Officer