

MEDICAL CONTESTED CASE HEARING NO. 14023

**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 scheduled for September 19, 2013 but reset to and held on October 28, 2013 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to Abilify Tab 5 mg 30.000/30 for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by ES, ombudsman.  
Respondent/Carrier appeared and was represented by LGM, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on (Date of Injury). Claimant's treating doctor prescribed Abilify Tab 5 mg 30.000/30 for treatment of Claimant's depression. Carrier denied this request and Claimant sought review by an IRO. The IRO reviewer, identified as a board certified psychiatrist, upheld the Carrier's denial citing the Official Disability Guidelines (ODG). The IRO reviewer noted that the ODG recommends the use of Abilify as an antipsychotic medication; however, no information was submitted regarding an objective functional improvement with the use of Abilify in conjunction with other antipsychotic medications. The IRO reviewer determined that the use of Abilify 5 mg tablets is not medically necessary.

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 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."

**ODG Recommendation for Abilify:**

Not recommended as a first-line treatment. Abilify (aripiprazole) is an antipsychotic medication. Antipsychotics are the first-line psychiatric treatment for schizophrenia. There is insufficient evidence to recommend atypical antipsychotics for conditions covered in ODG. See Atypical antipsychotics; & PTSD pharmacotherapy. See also Anxiety medications in chronic pain in the Chronic Pain Chapter.

Claimant testified that the Abilify is not prescribed as a first-line treatment but that she takes it in conjunction with Wellbutrin. Claimant testified that the combination of Abilify and Wellbutrin increases her ability and desire to perform daily activities. In a letter dated August 28, 2013, Dr. S, Claimant's treating doctor, stated that Claimant has a severe depression disorder that is not adequately treated with antidepressants. Dr. S noted that Abilify is the leading medication for assisting in antidepressant ("augmentation."). Dr. S stated, "Your guidelines are extremely out of date. Abilify is FDA approved for augmentation for treatment resistant depression. This has been the case for several years." Dr. S provided no evidence-based medicine to support his opinion nor did he adequately address the concerns raised by the IRO and the URA physicians.

Based on the evidence presented, Claimant does not meet the criteria set out in the ODG for the prescription Abilify Tab 5 mg 30.000/30 and Claimant failed to provide an evidence-based medicine medical opinion contrary to the determination of the IRO. The preponderance of the

evidence is not contrary to the IRO decision that Claimant is not entitled to Abilify Tab 5 mg 30.000/30 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 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 had workers' compensation coverage as a self-insurer.
  - D. Claimant sustained a compensable injury on (Date of Injury).
  - E. The IRO determined that the proposed Abilify Tab 5 mg 30.000/30 is not medically necessary for the compensable injury of (Date of Injury).
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 does not meet the requirements of the ODG for Abilify Tab 5 mg 30.000/30 and she failed to present other evidence-based medicine supporting the necessity for this prescription.
4. Abilify Tab 5 mg 30.000/30 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 Abilify Tab 5 mg 30.000/30 is not health care reasonably required for the compensable injury of (Date of Injury).

**DECISION**

Claimant is not entitled to Abilify Tab 5 mg 30.000/30 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 **(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 28<sup>th</sup> day of October, 2013.

Carol A. Fougerat  
Hearing Officer