

MEDICAL CONTESTED CASE HEARING NO.14040

**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 October 29, 2013 but reset to and held on January 29, 2014 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 a right elbow radial tunnel decompression/radial nerve decompression for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

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

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

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to her right upper extremity on (Date of Injury). Claimant underwent a right elbow extensor release on April 11, 2013 and an EMG/NCV performed on June 15, 2013 revealed right wrist ulnar neuropathy. Claimant's treating doctor, Dr. S, has recommended a right elbow radial tunnel decompression/radial nerve decompression which was denied by the Carrier and reviewed by an IRO. The IRO reviewer, identified as a board certified orthopedic surgeon, upheld the Carrier's denial. The IRO reviewer noted that, without documentation of essentially six months of comprehensive and recent non-operative treatment specifically designed to treat the diagnosed areas of radial tunnel decompression syndrome and radial nerve decompression, the request is not reasonable or medically necessary. The IRO also noted that the electrodiagnostics (EMG/NCV) have not revealed evidence of radial neuropathy.

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 Recommendations for radial tunnel decompression/radial nerve decompression:**

Recommended as an option in simple cases after 3-6 months of conservative care plus positive electrodiagnostic studies and objective evidence of loss of function. Surgical decompression of radial tunnel syndrome (RTS), a relatively rare condition, remains controversial because the results are unpredictable. Surgical decompression may be beneficial for simple RTS, but may be less successful if there are coexisting additional nerve compression syndromes or lateral epicondylitis or if the patient is receiving workers' compensation. (Lee, 2007)

At the time Dr. S recommended the radial tunnel/radial nerve decompression, Claimant had not undergone 3-6 months of conservative care for that condition nor were there positive electrodiagnostic studies and objective evidence of loss of function. Claimant offered Dr. S' medical records but no response to the concerns raised by the URA's or the IRO regarding the recommendations in the ODG. Claimant offered no evidence-based medical opinion contrary to the IRO. Based on the evidence presented, Claimant failed to prove that she meets the requirements in the ODG for the requested procedure and she failed to provide an evidence-based medicine medical opinion sufficient to contradict the determination of the IRO. The

preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to a right elbow radial tunnel decompression/radial nerve decompression 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. Claimant sustained a compensable injury on (Date of Injury).
  - D. The IRO determined that the proposed right elbow radial tunnel decompression/radial nerve decompression 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 recommendations of the ODG for a right elbow radial tunnel decompression/radial nerve decompression and she failed to present other evidence-based medicine supporting the necessity for this procedure.
4. Right elbow radial tunnel decompression/radial nerve decompression 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 a right elbow radial tunnel decompression/radial nerve decompression is not health care reasonably required for the compensable injury of (Date of Injury).

**DECISION**

Claimant is not entitled to a right elbow radial tunnel decompression/radial nerve decompression 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 (EMPLOYER) (SELF-INSURED) and the name and address of its registered agent for service of process is:

**INTERIM EXECUTIVE DIRECTOR OF HUMAN RESOURCES  
(STREET)  
(CITY), TX (ZIPCODE)**

Signed this 29<sup>th</sup> day of January, 2014.

Carol A. Fougerat  
Hearing Officer