

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to an extreme lateral interbody fusion procedure at the L4-L5 for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On July 21, 2014, Donald E. Woods, a Division hearing officer, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Independent Review Organization (IRO) decision that Claimant is not entitled to an extreme lateral interbody fusion at L3-L4 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by AF, ombudsman.

Carrier appeared and was represented by CA, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: RH M.D.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-3

Claimant's Exhibits C-1 through C-7

Carrier's Exhibits CR-A through CR-M

DISCUSSION

Claimant sustained a compensable low back injury on (Date of Injury) while working as a truck driver for the Employer. Claimant failed conservative care and ultimately had two lumbar surgeries in 2000. The end result was a lumbar fusion at the L5-S1 level.

Following the two surgeries in 2000, Claimant had some improvement in symptoms, but his condition worsened by 2005. This led to a third surgery in 2006 which resulted in a fusion at the L4-L5 level of the lumbar spine. Again, Claimant had some improvement after the third surgery but was never pain free. Claimant had a fourth lumbar surgery in 2007 to remove hardware. Claimant remained under the care of a pain management doctor and his symptoms have gradually worsened.

Claimant was evaluated by Dr. SH in September of 2013 and he ultimately recommended that Claimant undergo an extreme lateral interbody fusion at the L3-L4 level of the lumbar spine. The Carrier has denied Dr. H's request for lumbar surgery and Claimant has requested the Carrier's denial be reviewed by an IRO. The IRO reviewing doctor upheld the Carrier's denial and Claimant has appealed that decision to this medical contested case hearing.

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 IRO decision upheld the Carrier’s denial of the requested medical procedure because the ODG does not recommend the procedure. The ODG discusses the extreme lateral interbody fusion surgery, noting it does provide some benefits to patients, but concludes that additional studies are required to further evaluate and monitor the short and long term safety, efficiency, outcomes and complications of the procedure.

Claimant did not present evidence based medicine in support of his request to have the procedure approved. Claimant recognizes that evidence based medicine is not available, but he contends that the extreme lateral interbody fusion surgery is a generally accepted standard of medical practice recognized in the medical community. He argues that this is an exception that applies when evidence based medicine is not available. In support of his position, he offers the opinion of Dr. H (Cl Ex 2) who states this procedure has been used for almost a decade now. He notes that almost every major medical implant company has developed implants for this type of surgery. He believes the requested procedure is a safe procedure with less chance of nerve root injury than other procedures.

The Carrier argues that the IRO decision should be upheld because Claimant has not presented any evidence based medicine to support his position. In addition, Carrier believes Claimant has failed to show that the procedure requested is a generally accepted standard of medical practice recognized in the medical community. It argues that the one-page opinion of one doctor is insufficient to meet this standard.

I find that the preponderance of the evidence is not contrary to the IRO decision. The ODG does not recommend the procedure. Claimant failed to establish that an extreme lateral interbody fusion is a generally accepted standard of practice recognized in the medical community. Dr. H may very well be correct and this procedure may become the accepted practice, but it presently does not meet the standard of being health care reasonably required.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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 the (Employer), Employer.

- C. On (Date of Injury), Employer was a self-insured governmental entity under the Texas Workers' Compensation Act, 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 low back injury on (Date of Injury).
 4. Dr. SH has recommended an extreme lateral interbody fusion surgery at the L3-L4 level of Claimant's lumbar spine.
 5. The IRO decision upheld the Carrier's denial of Dr. H's requested procedure based on the ODG's non-recommendation of the procedure.
 6. Claimant failed to establish that the extreme lateral interbody fusion procedure was a generally accepted standard of medical practice recognized in the medical community.
 7. The extreme lateral interbody fusion procedure 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 Independent Review Organization's decision that Claimant is not entitled to an extreme lateral interbody fusion at L3-L4 for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an extreme lateral interbody fusion procedure at L3-L4 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) (**SELF-INSURED**) and the name and address of its registered agent for service of process is:

(SELF_INSURED)
(STREET)
(CITY), TX (ZIPCODE)

Signed this 24th day of July, 2014.

Donald E. Woods
Hearing Officer