

MEDICAL CONTESTED CASE HEARING NO. 15002

**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 IP lumbar fusion and instrumentation at L4-S1 for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

Following a prehearing on July 21, 2014, a contested case hearing (CCH) was held on September 16, 2014, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to an IP lumbar fusion and instrumentation at L4-S1 for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was represented by BR, attorney, at the pre-hearing on July 21, 2014, and FC, attorney at the CCH on September 16, 2014. Respondent/Carrier appeared and was represented by SP, attorney at the pre-hearing on July 21, 2014, and BJ, attorney, at the CCH on September 16, 2014.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: None.

For Carrier: Dr. NT.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-2.

Claimant's Exhibits C-1 through C-12.

Carrier's Exhibits CR-A through CR-K.

## **BACKGROUND INFORMATION**

Claimant sustained a low back spine injury on (Date of Injury) when he got up from lying on a floor carpet. On October 26, 2012, Dr. SE performed a laminectomy and foraminotomy at L4-5 and L5-S1. Post-operatively, treatment has consisted of medications, physical therapy and a home exercise program. At the time of his October 28, 2013 visit, Claimant complained of increasing back pain with radiation down his left leg. X-rays taken at that time showed retrolisthesis at L5-S1 with reduction in forward flexion. The February 12, 2014, CT/myelogram showed moderate spondylosis of L5-S1 with minimal retrolisthesis, and at L4-5, a borderline congenital stenosis of the central canal without recurrent disk herniation and no instability identified. The February 24, 2014, electrodiagnostic study noted left S1 and right L5 nerve root irritation. The April 8, 2014, lumbar spine x-rays with flexion/extension noted moderate degenerative changes in the lumbar spine. Dr. S recommended a lumbar fusion and instrumentation from L4 to S1. A pre-authorization request and a reconsideration request for the lumbar fusion surgery were both denied by Carriers' utilization review agents. The reviewers opined that there was limited documentation of post-operative conservative treatment, the psychological evaluation recommended six sessions prior to surgery so Claimant was not psychologically ready for surgical treatment, and there was a lack of documented findings at L4-5 supporting surgical intervention at that level. Dr. S proceeded with a request for review by an Independent Review Organization (IRO). An IRO reviewer, an orthopedic surgeon, upheld the denial of the requested services on June 18, 2014. The IRO reviewer noted that the L4-5 level does not have findings that would support a lumbar fusion within Official Disability Guidelines (ODG) recommendations, as the findings did not document instability at L4-5. The reviewer also noted that even though the findings support the need for surgery at the L5-S1 level, there is no documentation of exhaustion of an appropriate course of conservative treatment, and the patient is not psychologically ready for surgery. Therefore the proposed surgery was determined to be not medically necessary within the ODG recommendations.

## **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 Texas Mutual Insurance Company, Carrier.
  - D. Claimant sustained a compensable lumbar spinal injury on (Date of Injury).

- E. The IRO determined Claimant should not have an IP lumbar fusion and instrumentation at L4-S1 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. An IP lumbar fusion and instrumentation at L4-S1 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 an IP lumbar fusion and instrumentation at L4-S1 is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to an IP lumbar fusion and instrumentation at L4-S1 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD GERGASKO, PRESIDENT  
6210 HWY 290 EAST  
AUSTIN, TEXAS 78723**

Signed this 19th day of September, 2014.

Judy L. Ney  
Hearing Officer