

MEDICAL CONTESTED CASE HEARING NO. 15014

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:

In (DWC#)-02:

Claimant is not entitled to Parafon Forte 500 mg (unspecified quantity and number of refills) for the compensable injury of (Date of Injury).

In (DWC#)-03:

Claimant is not entitled to Norco 10-325 mg #180 for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

Thomas Hight, a Division hearing officer, held a contested case hearing on December 2, 2014 to decide the following disputed issue in (DWC#)-02:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to Parafon Forte 500 mg (unspecified quantity and number of refills) for the compensable injury of (Date of Injury)?

And the following disputed issue in (DWC#)-03:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to Norco 10-325 mg #180 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by ER, ombudsman. Respondent/Carrier appeared and was represented by PP, attorney.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury). He had a fusion at L5-S1 and suffers from chronic back pain. Treating physician Dr. HC requested approval for Parafon Forte

500 mg (unspecified quantity and number of refills) and Norco 10-325 mg #180. The IRO doctors upheld the previous denials, and Claimant appealed.

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."

The ODG Low Back section provides the following concerning use of muscle relaxants for back pain:

Recommend non-sedating muscle relaxants with caution as a second-line option for short-term (less than two weeks) treatment of acute LBP and for short-term treatment of acute exacerbations in patients with chronic LBP. (Chou, 2007) (Mens, 2005) (Van Tulder, 1998) (van Tulder, 2003) (van Tulder, 2006) (Schnitzer, 2004) (See, 2008) See the Low Back Chapter. Muscle relaxants may

be effective in reducing pain and muscle tension, and increasing mobility. However, in most LBP cases, they show no benefit beyond NSAIDs in pain and overall improvement. Also there is no additional benefit shown in combination with NSAIDs. Efficacy appears to diminish over time, and prolonged use of some medications in this class may lead to dependence.

The ODG Low Back section provides the following concerning use of opioids for chronic back pain:

Not recommended as a first-line treatment for chronic non-malignant pain, and not recommended in patients at high risk for misuse, diversion, or substance abuse. Opioids may be recommended as a 2nd or 3rd line treatment option for chronic non-malignant pain, with caution, especially at doses over 100 mg morphine equivalent dosage/day (MED). Risks of adverse effects are documented in the literature at doses as low as 50 MED. At this dose of MED, prescribing clinicians should begin to use caution in terms of any additional escalation of dose. At doses of 100 mg MED it is recommended that reassessment of use of this class of drugs should be made due to limited evidence for improved pain control and function with continued use as well as evidence of substantial adverse risks with higher MEDs.

Use for specific disease states

- *Chronic back pain:* Opioids appear to be efficacious but should be limited for short-term pain relief in patients with acute low back pain. Long-term efficacy is unclear (>16 weeks), and there is also limited evidence for the use of opioids for chronic low back pain. (Martell-*Annals*, 2007) (White, 2011) (Franklin, 2009) Failure of activity level to respond to a time-limited course of opioids has led to the suggestion of reassessment and consideration of alternative therapy. There is no evidence to recommend one opioid over another. In patients taking opioids for back pain, the prevalence of lifetime substance use disorders has ranged from 36% to 56% (a statistic limited by poor study design). Limited information indicates that up to one-fourth of patients who receive opioids exhibit aberrant medication-taking behavior. (Martell-*Annals*, 2007) (Chou, 2007) There are three studies comparing tramadol to placebo that have reported pain relief, but this did not necessarily improve function. (Deshpande, 2007) See also the Low Back Chapter for recommendations in acute pain, where opioids are not recommended except for short use for severe cases, not to exceed 2 weeks.

The IRO doctor who reviewed the request for Parafon Forte, a specialist in physical medicine and rehabilitation, noted the ODG recommends against long term use of Parafon Forte for treatment of chronic pain.

The IRO doctor who reviewed the request for Norco (hydrocodone, an opioid), a board certified orthopedic surgeon, noted that the request was for an increase in dosage from 7.5-325 mg to 10-325 mg, that Claimant was able to work in his usual profession as a security guard on the 7.5-325 mg dosage, that the medical records did not indicate why opiate weaning was not attempted, and that there was no evidence that opioids showed any long term benefit or improvement in function when used as treatment for chronic back pain.

Claimant testified that he needed the requested medications to function on his job, and that he needed the 10-325 mg dose of hydrocodone to keep his blood pressure from going out of control due to pain.

Dr. C testified for Claimant. He acknowledged the ODG recommends against long term use of either requested medication for chronic back pain but argued Claimant was an “outlier”, relying on ODG Appendix D, part I.B., which provides as follows:

B. Treatments that are covered but not recommended

- (1) Patient co-morbidities
- (2) Documenting functional improvement
- (3) Examples not recommended in the guidelines

Dr. C focused on the request for hydrocodone. He said that Claimant’s high blood pressure while in pain was a co-morbidity justifying the requested medication, and that Claimant’s ability to work while taking the requested medication documented functional improvement. He did not address the increase in requested dosage of hydrocodone.

Medical records from Claimant’s personal care physician, Dr. LM, did not support Dr. C’s analysis concerning high blood pressure. Claimant agreed he was able to work while taking the 7.5-325 mg dose of hydrocodone.

Carrier’s case was supported by the testimony of Dr. RA.

Claimant failed to overcome either IRO decision by the preponderance of evidence based medical evidence.

There was no objection to the testimony, reports, or qualifications of any doctor.

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 in sequences -02 and -03:
 - 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 Fire and Casualty Insurance Company of Connecticut, Carrier.
 - D. On (Date of Injury) Claimant sustained a compensable injury.
 - E. The Independent Review Organizations determined Claimant should not have the requested Parafon Forte or Norco.
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. Parafon Forte 500 mg (unspecified quantity and number of refills) is not health care reasonably required for the compensable injury of (Date of Injury).
4. Norco 10-325 mg #180 is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

In (DWC#)-02:

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 Parafon Forte 500 mg (unspecified quantity and number of refills) is not health care reasonably required for the compensable injury of (Date of Injury).

In (DWC#)-03:

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 Norco 10-325 mg #180 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

In (DWC#)-02:

Claimant is not entitled to Parafon Forte 500 mg (unspecified quantity and number of refills) for the compensable injury of (Date of Injury).

In (DWC#)-03:

Claimant is not entitled to Norco 10-325 mg #180 for the compensable injury of (Date of Injury).

ORDER

In (DWC#)-02:

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 Section 408.021 of the Act.

In (DWC#)-03:

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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 4th day of December, 2014.

Thomas Hight
Hearing Officer