MEDICAL CONTESTED CASE HEARING NO. 15042

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 entitled to an ACDF/AISF C4-C7 with 2 day inpatient hospitalization for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On April 30, 2015, Carol A. Fougerat, a Division Hearing Officer, held a contested case hearing 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 entitled to ACDF/AISF C4-C7 with 2 day inpatient hospitalization for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by LG, attorney.

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

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: Dr. V H

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits: HO-1 and HO-2

Claimant's Exhibits: C-1 through C-33

Carrier's Exhibits: CR-A through CR-Z

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), when a strut struck him in the right side of the lower jaw, left wrist and forearm. Claimant sustained a fracture of the jaw and developed complaints of pain in the neck with upper extremity radiating pain and associated numbness and tingling. An MRI of the cervical spine was performed on September 18, 2012, and revealed findings of moderate to severe loss of disc heights from C4 to C7, disc protrusions at C4-5, C5-6 and C6-7, mild to moderate central canal stenosis at C4-5 and more severe canal stenosis at C5-6 and C6-7. Claimant has undergone ESIs at C5-6 and C6-7. Stephen Earle, M.D., Claimant's orthopedic surgeon, recommended a C4 to C7 anterior cervical discectomy and fusion which was denied by the Carrier and appealed to an IRO.

The IRO reviewer, identified as board certified in neurological surgery, overturned the Carrier's denial and determined that the requested procedure was medically necessary. The IRO reviewer noted that Claimant does present with ongoing complaints of pain in the cervical spine radiating to the upper extremities. The IRO reviewer stated that the imaging studies do show rather severe spondylitic change from C4 to C7 with multiple disc protrusions noted, contributing to moderate canal stenosis at C4-5, and moderate to severe canal stenosis at C5-6 and C6-7. There was also evidence of severe foraminal stenosis at these levels. The IRO reviewer noted that, based on Claimant's most recent physical examination findings, there were positive Spurling's signs with motor weakness in the upper extremities, as well as sensory loss in a C6 and C7 nerve root distribution. The IRO reviewer opined that it was highly unlikely that Claimant would have any further response to conservative treatment and, from the clinical documentation, Claimant has failed a substantial amount of conservative treatment. The IRO reviewer noted that Claimant has clearance for surgical intervention from a psychological perspective and, given Claimant's physical examination findings, there are indications for surgical intervention.

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 Criteria for Cervical Fusion:

(1) Acute traumatic spinal injury (fracture or dislocation) resulting in cervical spinal instability.
(2) Osteomyelitis (bone infection) resulting in vertebral body destruction.
(3) Primary or metastatic bone tumor resulting in fracture instability or spinal cord compression.
(4) Cervical nerve root compression verified by diagnostic imaging (i.e., MRI or CT myelogram) and resulting in severe pain OR profound weakness of the extremities.
(5) Spondylotic myelopathy based on clinical signs and/or symptoms (Clumsiness of hands, urinary urgency, new-onset bowel or bladder incontinence, frequent falls, hyperreflexia, Hoffmann sign, increased tone or spasticity, loss of thenar or hypothenar eminence, gait abnormality or pathologic Babinski sign) and Diagnostic imaging (i.e., MRI or CT myelogram) demonstrating spinal cord compression.
(6) Spondylotic radiculopathy or nontraumatic instability with All of the following criteria:
    (a) Significant symptoms that correlate with physical exam findings AND radiologist-interpreted imaging reports.
    (b) Persistent or progressive radicular pain or weakness secondary to nerve root compression or moderate to severe neck pain, despite 8 weeks conservative therapy with at least 2 of the following:

- Active pain management with pharmacotherapy that addresses neuropathic pain and other pain sources (e.g., an NSAID, muscle relaxant or tricyclic antidepressant);

- Medical management with oral steroids, facet or epidural injections;

- Physical therapy, documented participation in a formal, active physical therapy program as directed by a physiatrist or physical therapist, may include a home exercise program and activity modification, as appropriate.

(c) Clinically significant function limitation, resulting in inability or significantly decreased ability to perform normal, daily activities of work or at-home duties.
(d) Diagnostic imaging (i.e., MRI or CT myelogram) demonstrates cervical nerve root compression, or Diagnostic imaging by x-ray demonstrates Instability by flexion and extension x-rays; Sagittal plane translation >3mm; OR Sagittal plane translation >20% of vertebral body width; OR Relative sagittal plane angulation >11 degrees.
(e) Not recommend repeat surgery at the same level.
(f) Tobacco cessation: Because of the high risk of pseudoarthrosis, a smoker anticipating a spinal fusion should adhere to a tobacco-cessation program that results in abstinence from tobacco for at least six weeks prior to surgery.
(g) Number of levels: When requesting authorization for cervical fusion of multiple levels, each level is subject to the criteria above. Fewer levels are preferred to limit strain on the unfused segments. If there is multi-level degeneration, prefer limiting to no more than three levels. With one level, there is approximately a 80% chance of benefit, for a two-level fusion it drops to around 60%, and for a three-level fusion to around 50%. But not fusing additional levels meeting the criteria, risks having to do future operations.
(h) The decision on technique (e.g. autograft versus allograft, instrumentation) should be left to the surgeon.

Carrier argued that the IRO's determination was based solely on the 29 pages of medical records submitted to the IRO by the requesting surgeon. Carrier argued that the medical records submitted for review by the IRO consisted of misleading and inaccurate assertions made by Dr. E. Carrier also argued that there were medical records in existence at the time of the IRO review that contradicted the representations made in the records submitted to the IRO. Dr. V H testified at the hearing and he opined that, based on the information submitted to the IRO, Dr. E's

representations support the necessity of the proposed surgery. Dr. V H testified that Dr. E's representations were not accurate reflections of Claimant's physical condition and that, based on his review of all the medical records, Claimant did not meet the ODG criteria for a three-level fusion as recommended by Dr. E.

Subsequent to the IRO's determination, Claimant underwent additional diagnostic studies, and two surgical consultations. Claimant underwent a cervical spine surgical procedure performed by Dr. Z on December 3, 2014. The operative report confirmed that Claimant had osteophytes at C4-C7. However, at the time of the IRO's review on April 14, 2014, the compensable injury included disc herniations at C4-C7, as administratively adjudicated on October 21, 2013, and the IRO's determination regarding the proposed surgery was based on the medical records submitted to the IRO for review.

Based on the evidence presented, Claimant met the requirements in the ODG for the requested procedure and Carrier failed to present evidence sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is entitled to ACDF/AISF C4-C7 with 2 day inpatient hospitalization for the compensable injury of (Date of Injury).

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 (Employer), Employer.

   C. Claimant sustained a compensable injury on (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. The IRO determined that the proposed ACDF/AISF C4-C7 with 2 day inpatient hospitalization is medically necessary for the compensable injury of (Date of Injury).

4. Claimant does meet the recommendations of the ODG for an ACDF/AISF C4-C7 with 2 day inpatient hospitalization.

5. An ACDF/AISF C4-C7 with 2 day inpatient hospitalization is 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 ACDF/AISF C4-C7 with 2 day inpatient hospitalization is health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to ACDF/AISF C4-C7 with 2 day inpatient hospitalization for the compensable injury of (Date of Injury).

ORDER

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY,** and the name and address of its registered agent for service of process is:

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3232

Signed this 1st day of May, 2015.

Carol A. Fougerat
Hearing Officer