

## MEDICAL CONTESTED CASE HEARING NO. 18015

### **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. For the reasons discussed herein, the Administrative Law Judge determines that Claimant is not entitled to Physical Therapy 3X's per week for 90 days.

### **STATEMENT OF THE CASE**

A contested case hearing was held on April 24, 2018 by a Division administrative law judge, Robin Burgess, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to Physical Therapy 3X's per week for 90 days?

### **PARTIES PRESENT**

Claimant appeared and was assisted by PB, ombudsman. Carrier appeared and was represented by JL, attorney.

### **EVIDENCE PRESENTED**

For Petitioner/Claimant: SM.

For Respondent/Carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits: ALJ-1 through ALJ-2.

Claimant's Exhibits: C-1 through C-13.

Carrier's Exhibits: CR-A through CR-E.

### **DISCUSSION**

The record reflects that on (Date of Injury), Claimant slipped on a patch of ice inside of a freezer, crushing two vertebrae in the course and scope of his employment. The record reveals that Claimant underwent approximately five (5) surgeries for the work injury prior to November 17, 2016. On November 17, 2016 Claimant underwent a sixth surgery, a T12-S1 fusion and he has not been able to use his lower extremities since the surgery.

Dr. RK requested treatment in the form of a Physical Therapy 3X's per week on August 29, 2017. The IRO denied the requested treatment, which a reviewer upheld on December 18, 2017. A DWC Form-049 was filed on January 23, 2018. Claimant disagrees with the IRO decision that upheld Carrier's denial of Physical Therapy 3X's per week for 90 days.

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.

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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* Preface regarding physical therapy states:

There are a number of overall physical therapy philosophies that may not be specifically mentioned within each guideline: (1) As time goes by, one should see an increase in the active regimen of care, a decrease in the passive regimen of care, and a fading of treatment frequency; (2) The exclusive use of "passive care" (e.g., palliative modalities) is not recommended; (3) Home programs should be initiated with the first therapy session and must include ongoing assessments of compliance as well as upgrades to the program; (4) Use of self-directed home therapy will facilitate the fading of treatment frequency, from several visits per week at the initiation of therapy to much less towards the end; (5) Patients should be formally assessed after a "six-visit clinical trial" to see if the patient is moving in a positive direction, no direction, or a negative direction (prior to continuing with the physical therapy); & (6) When treatment duration and/or number of visits exceeds the guideline, exceptional factors should be noted.

The record contains a Physician Advisors Report from Dr. BB indicating Claimant completed 8 of 12 authorized sessions of physical therapy. Dr. B further indicated that Claimant has attended what should have been a reasonable number of physical therapy visits for the establishment of a self-directed home program and concluded that there were no exceptional factors noted that Claimant could not continue with home exercising programs. Dr. B ultimately recommended non-certification for the requested Physical Therapy 3X's per week for 90 days.

Based on the evidence presented, the determination of the IRO is not contrary to the medical evidence. The requested Physical Therapy 3X per week for 90 days would exceed the ODG recommended treatment and the evidence provided does not explain why treatment should exceed the recommendation in ODG Guidelines. After a careful review of all of the evidence presented, Claimant has not shown that the preponderance of the evidence based medical evidence is contrary to the IRO decision.

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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction in this matter.
  - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - D. On (Date of Injury), Employer provided worker's compensation insurance through Centre Insurance Company, Carrier.
  - E. On (Date of Injury), Claimant sustained a compensable injury.
  - F. The Independent Review Organization (IRO) determined that Claimant is not entitled to Physical Therapy 3X's per week for 90 days.
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 Administrative Law Judge's Exhibit Number 2.
3. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to Physical Therapy 3X's per week for 90 days.

## **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. Claimant has not shown that the preponderance of the evidence based medical evidence is contrary to the IRO decision.
4. Physical Therapy 3X's per week for 90 days is not reasonably required for the compensable injury of (Date of Injury).

## **DECISION**

The preponderance of the medical evidence is not contrary to the decision of the IRO that Claimant is not entitled to Physical Therapy 3X's per week for 90 days.

## **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 **CENTRE 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, TEXAS 78701-3232**

Signed this 2<sup>nd</sup> day of May, 2018.

Robin Burgess  
Administrative Law Judge