

MEDICAL CONTESTED CASE HEARING NO. 13080

**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.

**ISSUE**

A contested case hearing was held on April 1, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to a C6-7 posterior fixation fusion and inpatient hospital stay x 2 days?

**PARTIES PRESENT**

The petitioner/claimant appeared and was represented by AA, attorney. The respondent/carrier appeared and was represented by CF, attorney.

**EVIDENCE PRESENTED**

Witnesses for Claimant/Petitioner: Claimant; Dr. F, M.D.

Witnesses for Carrier/Respondent: PG, M.D.

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

Evidence for Claimant/Petitioner: Exhibits CL-1 through CL-8.

Evidence for Carrier/Respondent: Exhibits CR-A and CR-K.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on (Date of Injury). He underwent an anterior cervical discectomy and fusion at the C6-7 level on April 7, 2011. While claimant's arm pain did decrease and his neck pain was initially improved, the neck pain began to worsen. His right upper extremity has had increased weakness. Dr. F requested a C6-7 posterior fixation fusion and this was denied by the carrier. Utilization Review upheld the denial and the claimant requested a review by an Independent Review Organization. The Independent Review Organization (IRO), TMF Health Quality Institute, upheld the carrier's denial of the requested surgical procedure. According to the IRO report, the IRO reviewer was a board certified neurosurgeon who has an inactive practice. The reviewer indicated that, according to the CT scan, there was a solid fusion at C6-7 and there was no indication for additional surgery.

## DISCUSSION

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.

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 133.208 (t), "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."

On the date of this medical contested case hearing, the ODG provides the following with regard to a posterior fixation fusion:

Fusion, posterior cervical

Under study. A posterior fusion and stabilization procedure is often used to treat cervical instability secondary to traumatic injury, rheumatoid arthritis, ankylosing spondylitis, neoplastic disease, infections, and previous laminectomy, and in cases where there has been insufficient anterior stabilization. (Callahan, 1977) (Liu, 2001) (Sagan, 2005) Although the addition of instrumentation is thought to add to fusion rate in posterior procedures, a study using strict criteria (including abnormal motion between segments, hardware failure, and radiolucency around the screws) reported a 38% rate of non-union in patients who received laminectomy with fusion compared to a 0% rate in a group receiving laminoplasty. (Heller, 2001) In a study based on 932,009 hospital discharges associated with cervical spine surgery for degenerative disease, complications and mortality were more common after posterior fusions or surgical procedures

associated with a primary diagnosis of cervical spondylosis with myelopathy. The overall percent of cases with complications was 2.40% for anterior decompression, 3.44% for anterior fusion, and 10.49% for posterior fusion. (Wang, 2007) Patients undergoing occipitocervical fusion or C1–2 (high cervical region) fusion is an absolute contraindication for returning to any type of activity with a risk of re-injury (such as contact sports), because the C-1 arch is relatively fragile and stability depends on the status of the periodontoid ligaments. (Burnett, 2006)

For hospital LOS after admission criteria are met, see Hospital length of stay (LOS).

At the contested case hearing, claimant provided evidence-based medicine in support of his claim. Claimant's physician testified that although it appeared that there was a solid fusion, claimant's symptoms indicate otherwise. Dr. F noted that the procedure is under study, per the ODG. His experience indicates that claimant's symptoms have arisen because there has been insufficient anterior stabilization. Based on the evidence presented, the claimant met his burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence and, therefore, the claimant is entitled to a C6-7 posterior fixation fusion and inpatient hospital stay x 2 days for the compensable injury of (Date of Injury).

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. Venue is proper in the (City) Field Office of the Workers' Compensation Division of the Texas Department of Insurance.
  - B. On (Date of Injury), claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), claimant sustained a compensable injury.
  - D. On (Date of Injury), employer provided workers' compensation insurance to its employees through American States Insurance Company, carrier.
2. The carrier delivered to the claimant a single document stating the true corporate name of the carrier, and the name and street address of the carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Envoy Medical Systems, L.P. was appointed to act as Independent Review Organization by the Texas Department of Insurance.

4. The IRO determined that the claimant was not entitled to a C6-7 posterior fixation fusion and inpatient hospital stay x 2 days for the compensable injury of (Date of Injury).
5. Claimant provided evidence-based medical evidence in support of his requested procedure.
6. A C6-7 posterior fixation fusion and inpatient hospital stay x 2 days is health care reasonably required for the compensable injury of (Date of Injury).

### **CONCLUSIONS OF LAW**

1. The Workers' Compensation Division of the Texas Department of Insurance has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to a C6-7 posterior fixation fusion and inpatient hospital stay x 2 days for the compensable injury of (Date of Injury).

### **DECISION**

The preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to a C6-7 posterior fixation fusion and inpatient hospital stay x 2 days 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 **AMERICAN STATES INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**LEON CROCKETT  
1600 NORTH COLLINS BLVD.  
RICHARDSON, TEXAS 75080**

Signed this 9th day of April, 2013.

Carolyn Cheu Mobley  
Hearing Officer