

**DOCKET NO. 453-03-4641.M2**  
**MRD NO. M2-03-1293-01**

<b>ORTHOFIX, INC.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner,</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>AMERICAN CASUALTY COMPANY</b>	§	
<b>OF READING, PA,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Petitioner, Orthofix, Inc., on behalf of a workers' compensation claimant, appealed the Independent Review Organization's (IRO) decision that denied Claimant's request to purchase an Orthotrac Pneumatic Vest (Orthotrac).<sup>1</sup> American Casualty Company of Reading, PA (Carrier) argued that the vest is not medically necessary. This decision finds in Petitioner's favor and preauthorizes the purchase of the vest.

**I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

Notice and jurisdiction were not disputed and are discussed only in the findings of fact and conclusions of law. The hearing convened on November 24, 2003, at State Office of Administrative Hearings facilities, 300 West Fifteenth Street, Austin, Texas. The Petitioner was represented by attorney William Davis. Erin Shanley, attorney, represented the Carrier. Four witnesses, including claimant, and medical experts for Petitioner and Carrier, testified at the hearing, and fourteen exhibits were admitted into evidence. The record was held open until December 8, 2003, in order to allow the parties to file written closing arguments.<sup>2</sup>

**II. DISCUSSION**

Claimant suffered a work-related injury (lumbar strain) on \_\_\_\_, when she was moving file boxes.<sup>3</sup> She had spinal surgery on April 9, 1997<sup>4</sup>, and again on February 10, 1999<sup>5</sup>, but continues to

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<sup>1</sup> The Orthotrac Pneumatic Vest was developed and is sold by Orthofix, Inc.

<sup>2</sup> On December 3, 2003, Petitioner filed a Post-Hearing Brief, containing proposed Findings of Fact and Conclusions of Law; Carrier filed a Closing Statement. On December 8, 2003, Carrier filed Objections to Petitioner's Proposed Findings of Fact.

<sup>3</sup> Claimant's doctor at the time of injury was Dr. Richard Bechtol. He referred Claimant for physical therapy for a low back sprain/strain. Physical therapy services were performed by Scoggins Physical Therapy in Amarillo, Texas. Claimant was ultimately referred by Dr. Bechtol to Dr. Jeffery Cone for back surgery. Dr. Cone referred Claimant to Dr. Robert Paige for pain management.

<sup>4</sup> Dr. Cone performed a right hemilaminotomy at L5-S1, L2-L3 (with excision of herniated nucleus pulposus) and diskectomy.

<sup>5</sup> Dr. Cone performed a lumbar himilamniectomy at L4-L5 and exploration of L5-S1 and L2-L3.

suffer from severe back pain. She has been treated with a variety of pain medications, physical therapy, epidural steroids, a TENS unit, myofascial release, ultrasound, massage therapy, and a trial of spinal cord stimulation since her injury. She was certified as reaching Maximum Medical Improvement (MMI) as of January 1998.<sup>6</sup>

In April of 2003, a request was made to purchase the Orthotrac vest to assist in relieving Claimant's back pain. Carrier denied the request, on the basis of a physician reviewer's recommendation that there were no clinical studies showing the efficacy of using the Orthotrac for pain control in patients with lumbar post-laminectomy syndrome. An IRO reviewer also found that the purchase should be denied. Petitioner appeals this determination.

#### **A. Petitioner's Evidence**

##### **1. Claimant's testimony**

Claimant testified that she has been in terrible pain throughout the past year. She described the pain as feeling like a knife was stabbing her in the lower part of her back. The pain also radiates down her leg. She currently takes Xanax, methadone, Protonics, high blood pressure medication, and Actiq lozenges. She has had allergic reactions to other pain medications. She has tried three different types of back braces in the past, but they did not provide long-lasting relief. They did provide stabilization after surgery.

Claimant said that she tried water therapy in 1999 and physical therapy, including riding a stationary bike in 2000-2001, but that she was unable to continue physical therapy because of the pain.<sup>7</sup> Additionally, Claimant testified that Carrier had denied her requests for physical therapy after her surgeries were unsuccessful.<sup>8</sup> Claimant can walk for a short period of time.

Claimant testified that her back pain is relieved when she reclines for short periods because it takes the pressure off her back. Claimant said that during the day, she alternates her position, between reclining and moving around. Claimant also said that the use of an electric blanket assists in reducing the pain. Claimant testified that she believed the Orthotrac might help her because it will help take the pressure off her back.

##### **2. Testimony of Dr. Robert Paige**

Dr. Paige has treated Claimant for pain management since February of 1997 after Claimant was referred to him by Dr. Jeffrey D. Cone, the surgeon who performed her back surgeries.

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<sup>6</sup> The fact that Claimant reached MMI does not prevent her from receiving treatment. *See Spine Treatment Guidelines*, 28 TEX. ADMIN. CODE (TAC) § 134.1001(g)(6). Post-MMI treatment is generally aimed at controlling pain or other symptomology, maintaining function, and/or helping the injured employee remain at work.

<sup>7</sup> Claimant did not provide any other information about the water therapy or why it was not successful.

<sup>8</sup> There is no written evidence in the record to confirm or refute Claimant's testimony regarding Carrier's denial of physical therapy services. There was a recommendation by Dr. William Kracke for Claimant to receive ongoing massage therapy in May 2002. There are no documents in the record that show whether or not this recommendation was approved by Carrier. However, it appears that Claimant did receive physical therapy services in March 2003. Carrier's Exhibit 1, pp. 155-159; 161-162.

Dr. Paige's practice consists of back pain management.<sup>9</sup> Dr. Paige testified that one of Claimant's back surgeries consisted of a fusion which changes the anatomy of the lumbar spine, causing narrowing and degenerative changes in the location where the nerves come out from the spine. Dr. Paige said that Claimant is not a surgical candidate and said that she is allergic to most pain medications. According to Dr. Paige, Claimant's pain affects her ability to function and move around.

Dr. Paige believes that the Orthotrac is medically reasonable and necessary because: (1) Claimant is not a surgical candidate; (2) pain medications are not a viable treatment for Claimant due to her allergic reactions to them; (3) Claimant suffers from extensive pain; (4) the Orthotrac performs differently than most back braces; and (5) other patients of his have successfully used the Orthotrac. He said that the Orthotrac is designed to provide traction by transferring the pressure from the spine to the sacrum, putting the mechanics of the spine back into position. Dr. Paige has used the Orthotrac with a few of his patients with success.<sup>10</sup>

Dr. Paige said that most of Claimant's pain is skeletal and cannot be treated. An MRI scan has revealed that Claimant has enhanced scarring around the S-1 nerve root. Dr. Paige said that if the spaces around the nerve root can be opened up, the pain related to muscle spasms or pain generated in the joints could be alleviated. Dr. Paige said that the Orthotrac provides traction which distracts the spine upwards, increasing the disk height. Because sitting puts pressure on the disks, exercise which involves sitting, such as bicycling, will not improve Claimant's condition.

### 3. Testimony of Dr. John Triano

Dr. Triano is a doctor of chiropractic and has been employed by the Texas Back Institute for eleven years. He serves as the director of the chiropractic division. He is co-director of the conservative care division. Dr. Triano has worked in the area of spine care for over thirty years. He has a Ph.D. in spine biomechanics and conducts spine research. Dr. Triano is an expert in non-operative spine care. He is currently involved in a research study involving the Orthotrac vest.

Dr. Triano described the Orthotrac and demonstrated how it works. The Orthotrac fits under a patient's rib cage and is worn outside the clothing. It contains two pneumatic lifts in the back and two in the front. The back cushion is inflatable and offers up to 80 pounds of upward lift. The amount of inflation is determined by the patient's comfort level. A valve will deflate the vest, allowing it to be removed. Patients generally wear the vest four times a day, for a minimum of 30 minutes each time. According to Dr. Triano, the Orthotrac should not really be considered a brace because most braces are, in some form, compression bandages that limit motion and increase inter-abdominal pressure whereas the Orthotrac does not.

Dr. Triano testified that the efficacy of the vest is demonstrated through several case studies. The Cleveland study, found that the unloading effect of the Orthotrac can be as much as 23% of a patient's upper body weight.<sup>11</sup> Dr. Triano also cited to a case study performed by Dr. V. Loguidice

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<sup>9</sup> Dr. Paige is an M.D. with the Advanced Pain Center in Amarillo, Texas.

<sup>10</sup> There is no written prescription for the Orthotrac by Dr. Paige in the record which details his rationale for believing that it is medically necessary.

<sup>11</sup> Petitioner's Exhibit 3. This exhibit was an abstract of a study of six cadaver torsos in which the internal disc pressure of L4-L5 was measured before and after application of the Orthotrac.

and others that studied 314 patients who wore the Orthotrac for four to eight weeks during the study. The study found a significant increase in the participants' functional improvement, as well as a decrease in reported pain.<sup>12</sup> This study, as modified, was also published in the *Care Management* journal by Dr. Chris Mahoney.<sup>13</sup> Lastly, Dr. Triano discussed a research project that he conducted using the Orthotrac. Petitioner's Exhibit 2. This study was presented at the North American Spine Society and was reviewed by one of the Society's committees in order to be publicized at the Society's meeting. The study resulted in a preliminary report, finding that use of the Orthotrac by participants resulted in a decrease in pain and an increase in activities of daily living.

While Dr. Triano agreed that having more scientific data available to evaluate a medical device is desirable, he said that the published literature is generally 2-5 years behind the research and practice due to the extensive reviews a new medical device (or procedure) receives. Dr. Triano said that he reviewed the Claimant's medical records and believed that Dr. Paige had a reasonable basis to think that the Orthotrac was a reasonable approach to treat Claimant's pain. Because Claimant testified that she is more comfortable when she unloads the weight from her spine, Dr. Triano believes the Orthotrac might be useful to relieve her pain and improve her quality of life. The Orthotrac will unload her spine while she is upright; therefore, she will not have to be off her feet in a reclining position in order to get pain relief.

Dr. Triano agreed that aqua therapy could be useful for Claimant and agreed that being upright in the water could help unload the spine, due to the water's buoyancy. However, Dr. Triano noted that it is impractical for the Claimant to remain in a swimming pool all the time and there were cost issues associated with pool therapy. Dr. Triano agreed that the vest does not provide a curative effect but solely provides pain relief. Dr. Triano testified that the cost of the Orthotrac vest is \$ 1,750.00.

## 2. Carrier's Evidence

### 1. Testimony of Dr. Samuel Bierner

Dr. Samuel Bierner is a Board-certified physical medicine and rehabilitation physician. He regularly performs reviews for durable medical equipment and considers the scientific and medical evidence to support the equipment's use in forming his opinion about its medical necessity. He testified that the goal of the Orthotrac is to unload the lumbar spine, which supports 30-50% of a patient's body weight. According to Dr. Bierner, the Orthotrac does not meet the medical community's usual and customary care.

Dr. Bierner reviewed Claimant's medical records and the information on the Orthotrac vest, as well as the studies admitted into evidence. With regard to the Loguidice study, Dr. Bierner said that it is not a published article, but is a form of a draft.<sup>14</sup> He also said that the study design was

problematic and that the study was not persuasive because: (1) there was not a control group or

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<sup>12</sup> Petitioner's Exhibit 1.

<sup>13</sup> Petitioner's Exhibit 5. According to Dr. Triano, *Care Management* is a peer-reviewed journal for the Association of Care Managers.

<sup>14</sup> Petitioner's Exhibit 1.

placebo; (2) there were a large number of drop-outs from the study, an almost 1/3 drop-out rate; (3) the results were not stratified based on diagnosis and there was no way to correlate reported improvement with back pain condition; (4) worker's compensation patients were not adequately represented in the study; and (5) the study does not indicate whether the improvement was attributable to the device or whether a "placebo" response occurred, i.e., improvement was due to there being an intervention, regardless of what it was.

With regard to the other two case studies discussed by Dr. Triano (including Dr. Triano's study), Dr. Bierner asserted that the studies are considered "posters" that are displayed at society meetings but do not have the same credibility as a published article.<sup>15</sup>

Dr. Bierner disagrees that the Orthotrac would relieve Claimant's pain symptoms because of the scarring around the nerve root. According to Dr. Bierner, Claimant's MRI does not reveal any neuro-foraminal stenosis; consequently, there is nothing to "open up." Dr. Bierner said that he believes that Claimant's leg pain is attributable to arachnoiditis which will cause stretching on nerve roots held down by scar tissue. He testified that arachnoiditis causes nerve pain, leg pain, numbness and burning. Dr. Bierner does not agree that off-loading is a good idea for Claimant. He also said that neuro-foraminal stenosis would be necessary in order to see relief from unloading weight off the spine and that Claimant did not have this. He said that the decompression and fusion that Claimant has undergone do not, in themselves, result in the type of pain experienced by Claimant.

According to Dr. Bierner, some patients have intractable pain that is not always well-defined or understood. These types of patients may require different stages of treatment, such as periodic medical care or increasing their levels of physical activity. Dr. Bierner said that Claimant's function and activity level should be increased through physical therapy or pool therapy, particularly swimming. He said that the use of a brace is inferior to active body movement because the brace will not increase muscle strength or endurance. Dr. Bierner testified that the use of the Orthotrac will not facilitate Claimant's return to work because she can only wear it periodically, it is bulky, and it is not compatible with the work environment. Dr. Bierner said that the medical record did not reflect that the Carrier would not authorize physical therapy, although he did not know if that was the case.

Dr. Bierner testified that there is an affiliation between Orthofix, Inc. and the Texas Back Institute, Dr. Triano's employer, due to an investment in ISI (a start-up company) that is owned by the chair of the Texas Back Institute, Dr. Hochschuler. Dr. Bierner testified that it was inappropriate for an employee of the Texas Back Institute (in this case, Dr. Triano) to comment on the efficacy of the Orthotrac, which is made by Orthofix. According to Dr. Bierner, this association should have been disclosed as part of the study and its report.

### **C. Petitioner's Rebuttal Evidence**

In response to the allegations of a conflict of interest, Dr. Triano testified that he is not a member of ISI, nor was his research directed by Dr. Hochschuler. Dr. Triano designed the research study and performed the analysis of the results. Dr. Triano agreed that the peer review process is important, but stated that a treating doctor has to use the tools available to help patients. In this case, it is his opinion that reasonable evidence indicates that the Orthotrac could help relieve Claimant's

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<sup>15</sup> Petitioner's Exhibits 2 and 3.

pain. According to Dr. Triano, the Orthotrac could help Claimant make the transition to becoming more physically active.

4. IRO

The IRO's July 17, 2003, decision states:

This is a relatively new, experimental device that has not been satisfactorily tested, nor has been reviewed in an appropriate peer reviewed journal. There is no demonstrated efficacy. This is not the prevailing standard of care. The goals of the device can be reached with other devices that have a longer history of efficacy. There is no identified or even anecdotally know (sic) analgesic sequale to the use of this device.

### III. APPLICABLE LAW

Pursuant to TEX. LAB. CODE ANN. (Labor Code) § 408.021, 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. The employee is specifically entitled to health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.

An insurance carrier is liable for all reasonable and necessary medical costs relating to the health care required to treat a compensable injury, but certain categories of health care, including devices considered to be investigational or experimental or durable medical equipment that costs over \$500 must be preauthorized. Labor Code § 413.014(b); 28 TEX. ADMIN. CODE (TAC) § 134.600. Further, the Commission requires concurrent review of on-going health care for an extension of treatment beyond previously approved health care. 28 TAC § 134.600.

An investigational or experimental service or device is one "for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care.@ Labor Code § 413.014(a). The use of investigational or experimental services or devices is subject to the concurrent review requirement of 28 TAC § 134.600(a) and (i).

### IV. ANALYSIS

It is ironic that the Orthotrac, a new, experimental medical device which shows promise for patients suffering from back pain, can be denied for coverage on the very basis that it is a new experimental medical device. The situation at hand is akin to the old adage: A newly graduated college student applies for a job. He cannot get a job without experience; until he gets a job, he can get no experience. At some point, there must be sufficient early medical data reviewing an experimental device that will satisfy the need to show potential efficacy; exactly what that point is, is

not easy to determine.<sup>16</sup> Carrier introduced an exhibit demonstrating that the Orthotrac is viewed as an experimental device by a number of insurance companies.<sup>17</sup> The fact that the device is experimental in nature, however, does not conclusively establish it is not medically necessary. The Administrative Law Judge (ALJ) has considered all the evidence in order to determine whether it is reasonable, based upon the information available to and presented by the parties in this hearing, to conclude that the Orthotrac may relieve the severe back pain suffered by Claimant as a result of her compensable injury.

In this case, the treating pain physician, Dr. Paige, has had prior success with other patients who have used the Orthotrac. Dr. Paige has examined the patient and has treated her on an on-going basis. Despite the myriad treatments provided to her, Claimant has not received significant pain relief. All other testifying doctors in this case have not examined or treated Claimant. Consequently, the ALJ gives deference to Dr. Paige's medical judgment. Dr. Paige explained why he believed the Orthotrac, which could off-load the weight from Claimant's spine, would relieve her pain. The ALJ does not know whether other patients treated successfully by Dr. Paige with the Orthotrac had the same medical condition as Claimant. However, Dr. Paige has recommended the use of this device to other patients in the past with success and it is not unreasonable for him to consider it as an option for Claimant, particularly when nothing else has effectively worked.

The ALJ has carefully considered the testimony of Drs. Triano and Bierner.<sup>18</sup> On the one hand, Dr. Triano argues that early medical studies have shown the Orthotrac to be effective in relieving back pain, thereby allowing a patient to participate in other exercise programs. On the other hand, Dr. Bierner argues that the studies are limited in scope and are flawed in their design; consequently, he claims that reliance upon these studies is insufficient to establish medical soundness for this device. The ALJ has reviewed the medical articles and concludes that the studies' reports that patients have had success with relieving back pain through use of the Orthotrac is a sufficient basis upon which to approve the purchase of the Orthotrac as an experimental medical device. Although there may be flaws with the studies, it should be remembered that these are preliminary and early studies of the Orthotrac. Hopefully, peer reviewed studies will begin to appear in the medical literature. The ALJ found Dr. Triano's testimony that the literature is behind the practice to be persuasive. Given the consistent reports of pain relief in all the reported studies thus far, the use of the Orthotrac, a non-invasive conservative treatment, is justified.<sup>19</sup> The ALJ did not

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<sup>16</sup> It is also unfortunate that the Orthotrac cannot be used on a trial basis, due to its custom nature. The ALJ notes that the physician reviewer had opined in April 2003 that a trial usage of the Orthotrac could indicate whether it would be beneficial to patients. Carrier's Exhibit 1, p. 171. Perhaps in the future, the developers of the Orthotrac will be able to design and make available for distribution some standard-sized prototypes that could be tried by patients prior to purchase; however, this is not presently the case.

<sup>17</sup> Carrier's Exhibit 3.

<sup>18</sup> Both doctors are well-qualified and rendered expert medical opinions in this case.

<sup>19</sup> The ALJ found the IRO decision to be particularly unhelpful in this case. The IRO reviewer's cursory conclusion does not discuss why the Orthotrac, particularly in light of Claimant's continued long-term unresponsiveness to any other treatment modality, should not be tried other than to say "It would appear that nothing has worked and now the requestor is making a stab in the dark to control the complaints." There is nothing in the record that justifies the rather cavalier conclusion that Dr. Paige is "making a stab in the dark" by recommending the Orthotrac's purchase. Dr. Paige is obviously attempting to treat Claimant's ongoing pain. There may be a point at which he must conclude that nothing more can be done; however, one cannot fault him for exploring newer treatment concepts when others have not been successful.

find the allegations of a conflict of interest with Dr. Triano's study to be dispositive. There was no evidence that the study itself was not conducted independently and that its results were inaccurate.

The ALJ believes that Carrier's assertions that Claimant should undergo physical therapy instead of using the Orthotrac, such as aqua therapy or swimming, amount to a red herring. While it is clear that Claimant needs some treatment for her intractable back pain, there is no evidence that Carrier would agree to pay for physical therapy or even how long such a therapy might be needed. Without this type of evidence, the ALJ cannot make a choice between the Orthotrac or physical therapy. Indeed, there was testimony by Claimant that the Carrier had previously refused to pay for requested physical therapy. Claimant did not appeal the denial of physical therapy; therefore, the ALJ cannot, in this case, order the Carrier to pay for physical therapy services.<sup>20</sup> Consequently, the ALJ can only address whether the Orthotrac is medically necessary to relieve the pain suffered by Claimant. The ALJ notes that the Orthotrac will enable Claimant to remain upright while receiving pain relief, perhaps enabling her to participate in more active exercise than in the past. Further, Claimant will be able to use the Orthotrac in her home environment, a less intensive setting than a physical therapy office or health club. The ALJ finds that the greater weight of the evidence supports a conclusion that the Orthotrac is medically necessary to treat Claimant's back pain.

## V. FINDINGS OF FACT

1. Claimant, \_\_\_\_, is a forty-five year old woman who suffered a lumber strain in her lower back, a compensable injury covered by worker's compensation insurance, on \_\_\_\_.
2. At the time of Claimant's injury, her employer had workers' compensation coverage through the Carrier, American Casualty Company of Reading, PA.
3. Claimant underwent two spinal surgeries, one on April 9, 1997, and the other on February 10, 1999. Neither surgery was successful in alleviating severe back pain.
4. Claimant was certified at Maximum Medical Improvement (MMI) in January 1998.
5. Claimant has undergone many forms of therapy in order to resolve her complaints of pain, including physical therapy, epidural steroids, use of a TENS unit, myofascial release, massage therapy, bed rest, ultrasound, and spinal cord stimulation. None of these treatments have been successful in resolving her complaints of back pain.
6. Claimant has tried many drug regimens, but is allergic to most of the available pain medications.
7. Claimant continues to experience pain in her lower back but experiences temporary relief when she is in a reclined position.
8. Dr. Robert Paige began treating Claimant for her back pain in February of 1997 and has continued to treat her.
9. In April 2003, Dr. Paige, her treating physician, prescribed the purchase of an Orthotrac

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<sup>20</sup> There was also testimony by Dr. Triano that the Orthotrac was actually more cost-effective than physical therapy. While there was evidence that the Orthotrac cost \$ 1,750.00, there was no evidence about the cost of physical therapy. Consequently, the ALJ is unable to decide which treatment(s) is more cost effective.

Pneumatic Vest.

10. The Orthotrac is a custom-fitted vest designed to off-load the patient's body weight through the inflation of pneumatic coil lifters. The patient controls the amount of inflation. The patient wears the vest three to four times a day, 30 minutes at a time.
11. Because of its custom nature, it is not possible for Claimant to undergo trial usage of the Orthotrac vest.
12. Claimant experiences severe pain, particularly when she is sitting.
13. In a decision dated April 22, 2003, a reviewing physician advisor recommended that the requested purchase of the Orthotrac vest not be approved due to a lack of clinical studies showing the efficacy of use of the Orthotrac vest for pain control in patients with lumbar post-laminectomy syndrome.
14. Preliminary medical studies of the Orthotrac in patients with back pain have consistently shown results that indicate the Orthotrac has relieved the patients' pain and increased their functioning.
15. In a decision dated July 17, 2003, a physician with an independent review organization ruled against Claimant's request to purchase the Orthotrac, and Petitioner timely appealed.
16. Notice of the hearing on the Petitioner's appeal was issued September 2, 2003.
17. Together, the hearing notice and IRO decision included a statement of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
18. At the November 24, 2003, hearing, the Carrier and Petitioner were present or represented.

## **VI. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act (the Act) TEX. LABOR CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to the Act § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided as required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The hearing was conducted in accordance with the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.

5. Petitioner, the party seeking relief, bore the burden of proof in this case. 28 TEXAS ADMIN. CODE § 148.21(h).
6. Based on the above Findings of Fact and Conclusions of Law, Petitioner met its burden of proof that the Orthotrac will cure or relieve the effects naturally resulting from the compensable injury or promote Claimant's recovery. The Act § 408.021 and 28 TEX. ADMIN. CODE 134.600.

### **ORDER**

THEREFORE, the appeal of Petitioner is granted and the purchase of an Orthotrac Pneumatic Vest is preauthorized.

**SIGNED this 7<sup>th</sup> day of January, 2004.**

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**SUZANNE FORMBY MARSHALL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**