

**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.

**ISSUES**

A Contested Case Hearing was held on December 11, 2008 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that Claimant is entitled to medications Fentanyl, Elavil and Ultracet for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by AW, Ombudsman.

Carrier appeared and was represented by JC, Attorney.

**BACKGROUND INFORMATION**

Claimant worked as a truck driver for the Employer's road construction company. He was injured on \_\_\_\_\_ when he was run over by a front-end loader. He sustained numerous crush injuries to the hips and pelvis, along with internal injuries to the lower abdomen.

Claimant has had numerous surgeries. He is presently in stable condition and is able to walk with the assistance of a cane. Claimant is in chronic pain and is expected to have chronic pain for the rest of his life. He takes medication to control the pain and the use of chronic pain medication is the subject of this medical dispute.

Claimant's present treating doctor, Dr. G, has provided chronic pain treatment since 2005. While the Carrier has denied payment of prescription drugs intermittently in the past, this present dispute began when the Carrier denied all prescription drugs on July 22, 2008. The denial letter does not provide a reason for the denial and states that a detailed report is included as an attachment to the denial letter. There was no attachment to the letter. Dr. G requested a reconsideration by the Carrier. The reconsideration request was denied on August 8, 2008. Again, the prescription drug request was denied in its entirety with no provisions for weaning of the medications. The only justification for denial of the prescription drug request on reconsideration was a statement that the criteria used in the denial was the Official Disability Guidelines (ODG). This attempted justification is particularly troublesome in light of the ODG's stern warning against immediate discontinuation of opioids. The ODG states, "Prior to discontinuing, it should be determined that the patient has not had treatment failure due to causes that can be corrected such as under-dosing or inappropriate dosing schedule. Weaning should occur under direct ongoing medical supervision as a slow taper, except for the below-mentioned possible indications for immediate discontinuation. The patient should not be abandoned."

Dr. G requested review by an Independent Review Organization (IRO). The IRO decision dated September 1, 2008 found Fentanyl, Elavil and Ultracet to be appropriate treatment for the Claimant's chronic pain symptoms and noted the use of these drugs for chronic pain control was supported by ODG criteria. The IRO reviewer did not recommend the use of Mobic and Robaxin for chronic pain. At the pre-hearing conference, Claimant noted his agreement with the IRO decision and did not wish to pursue the pre-certification for Mobic and Robaxin.

The Carrier appealed the IRO decision to a Medical Contested Case Hearing (MCCH).

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 Official Disability Guidelines (ODG).

The Carrier argued at the Contested Case Hearing (CCH) that narcotic medications are not appropriate treatment for chronic pain. It's support for this position is a RME opinion by Dr. C, who states that Claimant should be weaned from the narcotic analgesics. Dr. C did not provide any evidence-based medical evidence to support his opinion. No medical studies or treatment guidelines were addressed by Dr. C.

In this case, the Carrier is appealing the IRO decision and it has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence. It failed to meet that burden. The preponderance of the evidence is not contrary to the IRO decision that Claimant is entitled to medications Fentanyl, Elavil and Ultracet for the compensable injury of \_\_\_\_\_.

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 Texas Department of Insurance, Division of Workers' Compensation.
  - B. On \_\_\_\_\_, Claimant was the employee of (Employer).
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. Dr. G, the treating doctor, has prescribed medications Fentanyl, Elavil and Ultracet for treatment of Claimant's chronic pain condition.
4. The medications Fentanyl, Elavil and Ultracet are reasonably required medical treatment for the compensable injury of \_\_\_\_\_.

## **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 IRO decision that medications Fentanyl, Elavil and Ultracet are health care reasonably required for the compensable injury of \_\_\_\_\_.

## **DECISION**

Claimant is entitled to medications Fentanyl, Elavil and Ultracet for the compensable injury of \_\_\_\_\_.

## **ORDER**

Carrier is 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.

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

**C T CORPORATION SYSTEM  
350 N. ST. PAUL STREET  
DALLAS, TEXAS 75201**

Signed this 22nd day of December, 2008.

Donald E. Woods  
Hearing Officer