MEDICAL CONTESTED CASE HEARING NO. 18018

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 entitled to outpatient, left finger tenolysis, PIP joint release, possible pulley reconstruction, and possible Hunter rod replacement for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On May 29, 2018, a medical contested case hearing was held 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 outpatient left finger tenolysis, PIP joint release, possible pulley reconstruction, and possible Hunter rod replacement for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JR, ombudsman.

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

EVIDENCE PRESENTED

The following witnesses testified:

> For Claimant: Claimant
> For Carrier: BS, M.D.

The following exhibits were admitted into evidence:

> Administrative Law Judge's Exhibits ALJ-1 through ALJ-3
> Claimant's Exhibits C-1 through C-14
> Carrier's Exhibits CR-A through CR-H

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his left finger on (Date of Injury). He has undergone five surgeries and at this point in time his left index finger is essentially frozen at about a seventy to ninety degree angle. His latest surgeon appears to be wanting to perform one last effort to get

movement back into his finger. On October 23, 2017, Dr. JB performed the latest surgery, a repair of the digitorum superficialis tendon. Claimant was supposed to undergo continuous passive motion therapy but this was not properly performed by the physical therapist Claimant was referred to see and now Claimant's finger is locked in about a 70 degree flexion.

Claimant is now being treated by MH, M.D., who has requested to perform an outpatient left finger tenolysis, PIP joint release, possible pulley reconstruction, and possible Hunter rod replacement due to Claimant's left index finger previous failed surgeries. Carrier has referred Claimant's request to two utilization review doctors, who both agree that Claimant should not undergo the requested procedures, primarily because there has not been adequate time since the latest surgical procedure and because that was no clear evidence that Claimant had at least three months of physical therapy given the limited medical report that was submitted for review. The second reviewer stated surgery shoulder be delayed at least six months, with his review being performed on February 07, 2018. (Claimant's last surgery was October 23, 2017. Six months from that date would be May 23, 2018.) The second review also noted there was no clear evidence of three months of physical therapy. This is not listed in the ODG requirements noted below.

The IRO board-certified orthopedic surgeon wrote essentially the same response. He wrote there needed to be a course of non-operative management with passive or dynamic splinting for a significant period of time prior to surgical intervention. He wrote this was supported by evidence-based literature. This is not listed in the ODG, noted below.

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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to left finger tenolysis:

> Criteria for Flexor tenolysis:
> - Patient must be willing to commit to a rigorous course of physical therapy (vigorous postoperative ROM is required)
> - Patient must have good strength in flexor and extensor muscles of the hand and must have intact nerves to flexor muscles
> - If patient has had previous flexor tendon repair, surgery should be delayed until 6 months post op (in order to avoid tendon rupture), otherwise at least 3 months' conservative treatment (PT)
> - Consider using a wrist block and propofol anesthesia, so that the patient can demonstrate active motion in the operating room (indicating whether the tenolysis has been successful)
> - If tenolysis does not achieve sufficient ROM, repeated tenolysis is not indicated;
> - Contraindicated in patients with active infection, motor-tendon problems secondary to denervation, and unstable underlying fractures requiring fixation and immobilization. Relative contraindications include extensive adhesions, immature previous scars, and severe posttraumatic underlining arthrosis.
>
> Flexor tenolysis is a surgical procedure used to remove adhesions that inhibit active flexion of digits. Tenolysis is useful to improve function of tendons bound in scar tissue when the indications and techniques are carefully followed. Tenolysis is unsuccessful when done in the face of poor indications, when the tendon is not freed completely, or when the tenolysis is performed in association with complex orthopedic procedures which do not permit early postoperative active motion. Flexor tenolysis is a challenging procedure with valuable clinical usefulness in the restitution and enhancement of digital function in the appropriate patient. In the absence of complications, improvement in digital flexion can be expected. The requisites for success are a skilled surgeon, a motivated and well

> informed patient, and a closely monitored hand therapy program. Normal active tendon function requires that flexor tendons can glide smoothly within their tendon sheath. Damage to these tendons can require surgical repair, and in spite of successful surgical tendon repair, tendon adhesions can develop during the healing process, when scar tissue develops that connects tendons to the surrounding tendon sheath, thereby impeding normal tendon function. Patients present with decreased active range of motion following surgical repair of flexor tendons. The average time from flexor repair to flexor tenolysis is around 8 months but ranges from 2 to almost 25 months. Tenosynovectomy may be done in conjunction with tenolysis when there is inflammation of the lining of the tendon sheath (tenosynovitis). During a tenosynovectomy, the inflamed material around the affected tendon is carefully removed. (*Wheeless, 2012*) (*Azari, 2005*) (*Tolat, 1996*) (*Fetrow, 1967*)

On the date of this medical contested case hearing, the Official Disability Guidelines did not specifically address PIP joint release, possible pulley reconstruction, or possible Hunter rod replacement procedures.

On November 02, 2017, after his latest surgery, Dr. B discussed the importance of Claimant undergoing physical therapy and that his therapy was denied in (City) because it was approved in (City). Dr. B noted Claimant had significant scarring without a lot of active motion. Dr. B's plan noted Claimant "really needs therapy." On November 14, 2017, Dr. B wrote Claimant never got his physical therapy approved so he went three weeks without therapy. He wrote he would try to do more therapy but felt it was too late. On December 12, 2017, Dr. B wrote Claimant's finger was stuck and he had not yet had therapy, so it was probably too late. Dr. B was afraid Claimant's option was limited to having his joint fused but suggested a second opinion. On March 27, 2018, Dr. B wrote that he was skeptical that another tenolysis would be of any benefit but that he agreed it would not do any harm for Dr. H to try.

On April 06, 2018, Dr. B wrote Claimant had five surgeries and a very bad experience with physical therapy in (City), which left a permanent stiffness in his finger. He did not believe further therapy would help. He did not think another tenolysis would be beneficial but that another doctor was willing to try and that was a reasonable thing to do.

On January 11, 2018, Claimant was examined by MH, M.D., who is the surgeon recommending the proposed procedures.

In reviewing the ODG, there are no guidelines for PIP joint release, possible pulley reconstruction, or possible Hunter rod replacement procedures. Dr. H explained how these procedures worked and that he would have to see how the tissues looked once he opened up the finger to see what the best course of action was. As for the flexor tenolysis, it has been over six months since Claimant's last surgery. There is no recommendation in the ODG as to how much

or what type of therapy Claimant should undergo, only that he is willing to undergo rigorous physical therapy after the procedure. Claimant was willing to do that after the last surgery, but the physical therapy was either denied, delayed, or poorly performed. For the IRO or utilization review doctors to deny these surgeries because Claimant did not have three months of rigorous therapy is not found in the ODG and is somewhat disingenuous given the physical therapy was denied or poorly performed when it was prescribed.

There was medical evidence presented by Claimant that addressed the IRO decision. Claimant provided sufficient medical evidence and expert medical opinions to contradict the determination of the IRO and the preponderance of the credible evidence is contrary to the decision of the IRO.

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 (Date of Injury), Claimant was the employee of (Employer), Employer.

   C. On (Date of Injury), Employer provided workers' compensation insurance with Texas Mutual Insurance Company, Carrier.

   D. On (Date of Injury), Claimant sustained a compensable injury.

   E. The Independent Review Organization board-certified orthopedic surgeon determined Claimant should not have outpatient left finger tenolysis, PIP joint release, possible pulley reconstruction, and possible Hunter rod replacement.

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. Outpatient left finger tenolysis, PIP joint release, possible pulley reconstruction, and possible Hunter rod replacement 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 contrary to the decision of the IRO that outpatient left finger tenolysis, PIP joint release, possible pulley reconstruction, and possible Hunter rod replacement is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to outpatient left finger tenolysis, PIP joint release, possible pulley reconstruction, and possible Hunter rod replacement for the compensable injury of (Date of Injury).

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 §408.021.

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

RICHARD GERGASKO, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HWY. 290
AUSTIN, TEXAS 78723.

Signed this 30th day of May, 2018.

KEN WROBEL
Hearing Officer