

MEDICAL CONTESTED CASE HEARING NO. 18019

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Administrative Law Judge determines that Claimant is not entitled to a tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment for the compensable injury of (Date of Injury).

ISSUE

A contested case hearing was held on June 13, 2018, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment for the compensable injury of (Date of Injury)?

PARTIES PRESENT

The Petitioner/Claimant appeared and was assisted by NA, ombudsman. The Respondent/Carrier appeared and was represented by RR, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

Claimant/Petitioner: Claimant.

Carrier/Respondent: None.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1.

Claimant/Petitioner: Exhibits CL-1 through CL-5.

Carrier/Respondent: Exhibits CR-A through CR-F.

DISCUSSION

Claimant testified that, on (Date of Injury), she worked for Employer as a bartender. Claimant's job duties included making and serving drinks, which required that she repeatedly pinch, twist, and grasp with both hands. The compensable injury consists of bilateral wrist carpal tunnel syndrome, radial tunnel syndrome, and cubital tunnel syndrome. Because Claimant continued to have left elbow pain despite a prior bilateral carpal tunnel release surgery, orthopedic surgeon, Dr. MP, M.D., recommended a tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment. Carrier denied Claimant's request for surgery and Claimant sought review by an IRO.

The IRO reviewer was identified as an orthopedic surgeon licensed to practice in Texas. The IRO reviewer denied the requested surgery because, contrary to the Official Disability Guidelines for the requested surgery, there was a lack of clear documentation regarding objective loss of functioning, evidence of three to six months of conservative care, and positive electrodiagnostic studies. Claimant's November 7, 2017 electrodiagnostic study was normal. There was no electrophysiological evidence of a right or left median neuropathy at the wrist, elbow, or forearm or right or left cervical radiculopathy.

Texas Labor Code §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 §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 §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. *See* Texas Labor Code §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 §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."

For the requested medical treatment, the ODG provides:

ODG Recommendations for radial tunnel syndrome surgery:

Recommended as an option in simple cases after 3-6 months of conservative care plus positive electrodiagnostic studies and objective evidence of loss of function.

Surgical decompression of radial tunnel syndrome (RTS), a relatively rare condition, remains controversial because the results are unpredictable. Surgical decompression may be beneficial for simple RTS, but may be less successful if there are coexisting additional nerve compression syndromes or lateral epicondylitis or if the patient is receiving workers' compensation.

Claimant presented her testimony and medical records, including medical reports and a May 12, 2018 letter from Dr. M, in support of her position that the preponderance of the evidence is contrary to the IRO's decision. However, the ALJ finds that Claimant did not meet her burden of proof to overcome the decision of the IRO decision by a preponderance of the medical evidence. Claimant did not present persuasive medical evidence to establish that she met the ODG requirements for the requested surgery to treat Claimant's radial tunnel syndrome. Contrary to the ODG requirements for the requested surgery, Claimant's electrodiagnostic study results were normal. Claimant failed to establish by a preponderance of the evidence that the requested surgery was consistent with other evidence-based medicine or that the proposed treatment meets generally accepted standards of medical practice recognized in the medical community. Therefore, the Division determined that Claimant is not entitled to a tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment.

The Administrative Law Judge considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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).
 - C. On (Date of Injury), Claimant sustained a compensable injury, which consists of a bilateral wrist carpal tunnel syndrome, radial tunnel syndrome, and cubital tunnels syndrome.
 - D. On (Date of Injury), Employer provided workers' compensation insurance through XL Insurance America, Inc., Carrier.
2. 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 Administrative Law Judge's Exhibit Number 2.
3. Claimant does not meet the requirements of the ODG for a tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment.
4. A tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment is not 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 not contrary to the decision of the IRO that the Claimant is not entitled to a repair of a tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a tenotomy, elbow, lateral or medial; debridement, soft tissue and/or bone, open with tendon repair or reattachment for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **XL INSURANCE AMERICA, INC.** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
1999 BRYAN STREET, STE 900
DALLAS, TX 75201**

Signed this 18th day of June, 2018.

Rabiat Ngbwa
Administrative Law Judge