

MEDICAL CONTESTED CASE HEARING NO. 19001

**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 physical therapy (2 times per week for 6 weeks) for the left wrist for the (Date of Injury) compensable injury.

**STATEMENT OF THE CASE**

On January 14, 2019, Ana Thornton, a Division Administrative Law Judge, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to physical therapy (2 times per week for 6 weeks) for the left wrist for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by EG, 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-4

Petitioner/Claimant's Exhibits: C-1 through C-6

Respondent/Carrier's Exhibits: CR-A through CR-G

## DISCUSSION

On (Date of Injury), Claimant sustained a compensable injury to his left wrist. Records in evidence show that on that date, Claimant was playing football when his left wrist hit the ground. Claimant testified that due to the (Date of Injury) left wrist injury, he had left wrist surgery on June 8, 2017. According to medical records, the left wrist surgery consisted of left wrist arthroscopy, repair of the left scapholunate ligament and posterior interosseous nerve neurectomy. On August 10, 2017, Claimant had additional left wrist surgery to remove hardware.

Claimant testified that following the surgical procedures, he moved to Florida, but continued to receive treatment for his left wrist, including physical therapy and evaluations with orthopedic specialist, KE, M.D., and hand surgeon, DS, M.D. Records in evidence show that Claimant received a total of twenty-four sessions of left wrist physical therapy up through January 17, 2018. Records in evidence further show that Claimant was evaluated by Dr. E in October 2017 and January 2018, and with Dr. S on January 26, 2018 and March 30, 2018. The report from the January 26, 2018 visit reveals that Claimant told Dr. S that he had received physical therapy as recommended by Dr. E but he did not feel that it was helping. Dr. S requested that Claimant get the records showing the surgical procedures done in Texas. Dr. S reviewed Claimant's surgical reports when Claimant returned for another visit on March 30, 2018. According to Dr. S's examination at that visit, Claimant had full range of motion of the left hand, 5/5 strength and no tenderness to palpation, and negative functioning tests in the left hand and left digits, although Claimant had tenderness over the triangular fibrocartilage complex (TFCC) of the left wrist. Dr. S prescribed physical therapy, 2 times a week for 6 weeks.

On May 4, 2018, Dr. S submitted a request for approval of the physical therapy to the left wrist. On May 9, 2018, Carrier issued a denial of Dr. S's request. The denial letter indicated that family practitioner, LK, M.D., reviewed Claimant's medical records in formulating the denial. The letter also revealed that Dr. K took into consideration the Official Disability Guidelines (ODG), and noted that the ODG contemplates 9 visits over 8 weeks of physical/occupational therapy for a sprain and strain of the wrist and hand. Dr. K opined that the physical therapy request exceeded the ODG guidelines and that exceptional factors were not clearly identified based on review of Claimant's medical records.

Dr. S requested a reconsideration, and on June 14, 2018, Carrier issued a denial of the reconsideration. The June 14, 2018 denial letter stated that board certified orthopedic and hand surgeon, DT, M.D., reviewed Claimant's medical records. The June 14, 2018 denial letter also revealed that an additional medical record had been provided for consideration and that this record reflected that Claimant had a physical therapy session on March 2, 2018. In explaining the denial, the denial letter stated that Claimant had a total of 25 physical therapy sessions for the left wrist. Dr. T also relied on the ODG in formulating his opinion, indicating that per evidence-

based medicine, 24 visits over 8 weeks of physical therapy was recommended as a post-surgical treatment for arthroplasty/fusion. The letter further stated that:

“[T]he current request exceeds the guideline recommendation in addition to the previously completed (physical therapy) visits. There was no clear documentation of objective functional improvement from the prior sessions. There were no exceptional factors to support ongoing supervised therapy versus maintenance home exercises. There were no additional records submitted with significant findings that would overturn the prior denial of the request.”

Claimant asked for appointment of an IRO to contest Carrier’s denial of the left wrist physical therapy request. The Texas Department of Insurance appointed Medical Assessments, Inc., to act as an IRO. On August 6, 2018, the IRO issued a notice of its review decision and upheld the previous adverse determination. The IRO reviewer, identified as a “physician (having) 21 years of experience in Physical Medicine and Rehabilitation,” determined that the requested physical therapy was not medically necessary. The IRO reviewer noted that the requested physical therapy exceeded the ODG recommended number of visits for the diagnosis. The IRO reviewer further indicated that after completion of 24 visits over 11 weeks, there was documentation of plateau in gains in wrist range of motion and grip strength, and also stated that there was lack of clinical information regarding instruction in, and compliance with, a home exercise program based on review of Claimant’s medical records.

Claimant contends that the preponderance of the evidence contradicts the decision of the IRO issued on this case. In support of his position, Claimant relied on his testimony and medical records reflecting physical therapy and treatment with Dr. E and Dr. S. Carrier relied on the IRO decision and testimony of BS, M.D., who provided his opinion with regard to Claimant’s medical history, review of records, and the sufficiency of medical evidence to justify necessity of additional physical therapy. Dr. S agreed with Dr. T and with the IRO reviewer that additional left wrist physical therapy was not medically necessary.

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. The term “health care reasonably required” means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community. *See* Texas Labor Code § 401.011(22-a). Evidence-based medicine is further defined in Texas Labor Code § 401.011(18-a) as the use of 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 making decisions about the care of individual patients.

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 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 division 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.

According to the ODG, the criteria for physical/occupational therapy for the forearm, wrist and hand indicates the following:

Sprain and strain of the wrist and hand: 9 visits over 8 weeks

Arthropathy, unspecified: post-surgical treatment, arthroplasty/fusion/wrist/finger:  
24 visits over 8 weeks

In this case, Claimant has failed to present sufficient evidence to contradict the decision of the IRO. Nothing in the Claimant's medical records presented reflects evidence-based medical evidence to overcome the IRO determination. Additionally, Claimant's testimony regarding his evaluation by a designated doctor in November 2018 is insufficient to overcome the IRO decision, as any opinion or report from a designated doctor examination in November 2018 was not available to the IRO in August 2018. The testimony from Carrier's expert witness, Dr. S was persuasive to show that the IRO decision was appropriate. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to additional left wrist physical therapy for the compensable injury of (Date of Injury).

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 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 coverage with Texas Mutual Insurance Company, Carrier.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. Medical Assessments, Inc., was appointed to act as IRO by the Texas Department of Insurance.
  - F. On August 6, 2018, the IRO determined that the proposed physical therapy for Claimant's left wrist was not medically necessary for the compensable injury of (Date of Injury).
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 Administrative Law Judge's Exhibit Number 2.
  3. Claimant does not meet the recommendations of the ODG for additional left wrist physical therapy, and Claimant failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
  4. The left wrist physical therapy (2 times per week for 6 weeks) is not 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 not contrary to the decision of the IRO that the left wrist physical therapy (2 times per week for 6 weeks) is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to left wrist physical therapy (2 times per week for 6 weeks) for the compensable injury of (Date of Injury).

**ORDER**

Carrier is not liable for the medical benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code § 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 J. GERGASKO  
TEXAS MUTUAL INSURANCE COMPANY  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723**

Signed this 15th day of January, 2019.

Ana Thornton  
Administrative Law Judge