

## MEDICAL CONTESTED CASE HEARING NO. 20001

### **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 the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to occupational therapy 3x4 for the compensable injury of (Date of Injury).

### **STATEMENT OF DISPUTES**

A contested case hearing was held on January 15, 2020 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 occupational therapy 3x4 for the compensable injury of (Date of Injury)?

### **PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by PO, ombudsman. Respondent/Carrier appeared and was represented by BQ, attorney.

### **EVIDENCE PRESENTED**

The following witnesses testified at the contested case hearing:

For Claimant: Claimant  
For Carrier: None

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits: ALJ-1 and ALJ-2  
Claimant's Exhibits: C-1 through C-5  
Carrier's Exhibits: CR-A and CR-B

### **DISCUSSION**

Claimant was employed as a metal fabricator, and he sustained a compensable injury on (Date of Injury), when his hand and glove got caught in a table saw. Claimant suffered a proximal interphalangeal joint dislocation at the left ring finger and he lost use of is ring finger. As a result

of this injury, Claimant underwent two surgeries. The second surgery was to remove scar tissue and was performed in March 2019. Claimant underwent physical therapy and, according to EH, PT, Claimant's was doing well and progressing well with treatment. Claimant testified that he continued to have a complete loss of grip strength in his left hand and he was unable to return to work due to the limitations of the use of his left hand. Claimant's treating health care provider, MP, M.D., requested 12 additional sessions of occupational therapy. This request was denied by Carrier and appealed to an IRO.

The IRO reviewer, identified as an orthopedic surgeon, upheld the Carrier's denial. The IRO reviewer provided a detailed and thorough analysis to support his/her conclusion. Additionally, the IRO reviewer contacted the occupational therapist, EH, and had a peer-to-peer discussion concerning Claimant's treatment. The IRO reviewer noted that the occupational therapist had no information about Claimant's work status or his job description and he did not know if Claimant was able to return to work with modification. The occupational therapist stated that Claimant was completely independent with home activities of daily living. The IRO reviewer concluded that without knowing Claimant's job description, return to work status or functional restriction, there was no clinical indication to continue additional outpatient occupational therapy. The IRO reviewer also determined that the Official Disability Guidelines (ODG) would not support the additional physical therapy since the recommended guidelines had been exceeded, there was no documentation of deficits, and no indication that the previous therapy was efficacious.

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."

### **ODG Criteria for Occupational Therapy:**

Allow for fading of treatment frequency (from up to 3 visits or more per week to 1 or less), plus active self-directed home PT. More visits may be necessary when grip strength is a problem, even if range of motion is improved.

#### **Fracture of metacarpal bone (hand):**

Medical treatment: 9 visits over 3 weeks

Post-surgical treatment: 16 visits over 10 weeks

#### **Fracture of one or more phalanges of hand (fingers):**

Minor, 8 visits over 5 weeks

Post-surgical treatment: Complicated, 16 visits over 10 weeks

#### **Dislocation of finger:**

9 visits over 8 weeks

Post-surgical treatment: 16 visits over 10 weeks

In response to the determination of the IRO, Claimant offered a letter from his treating doctor, Dr. P. Dr. P stated that Claimant had ongoing stiffness, did not have functional range of motion, and that these symptoms serve as additional circumstances which require extended therapy sessions above that recommended in the ODG. He likened Claimant's injury to the amount of therapy needed after an amputation (48 sessions per ODG). Dr. P stated that pain, lack of functional range of motion, and disability are the accepted medical standards that require additional physical therapy sessions.

As noted by the IRO, the ODG recommends 16 sessions of physical therapy following surgical intervention for a dislocation of the finger. The report also stated that the documentation indicated Claimant had ongoing complaints of reduced function of the left ring finger following surgical intervention for a proximal interphalangeal joint dislocation. Claimant had 29 sessions of physical therapy and the IRO reviewer noted that it was unclear what current deficits remain

and if the previous therapy had been efficacious. Dr. P did not address these concerns in his response letter nor did he offer an evidence-based medical opinion regarding the necessity for the additional therapy.

Based on the evidence presented, Claimant failed to prove that he meets the requirements in the ODG for the requested therapy and he failed to provide an evidence-based medical opinion sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to occupational therapy 3x4 for the compensable injury of (Date of Injury).

The Administrative Law Judge considered all the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all the evidence whether 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 had workers' compensable insurance with Travelers Indemnity Company, Carrier.
  - D. Claimant sustained a compensable injury on (Date of Injury).
  - E. The IRO determined that the proposed occupational therapy 3x4 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 occupational therapy 3x4 and he failed to present other evidence-based medicine supporting the necessity for this therapy.
4. Occupational therapy 3x4 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 occupational therapy 3x4 is not health care reasonably required for the compensable injury of (Date of Injury).

## DECISION

Claimant is not entitled to occupational therapy 3x4 for the compensable injury of (Date of Injury).

## ORDER

Carrier is not liable for the 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 **TRAVELERS INDEMNITY COMPANY, a subsidiary of THE TRAVELERS INDEMNITY COMPANIES**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TX 78701**

Signed this 15<sup>th</sup> day of January 2020.

Carol A. Fougerat  
Administrative Law Judge