

MEDICAL CONTESTED CASE HEARING NO. 20004

**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 Right Foot Arthrodesis, Partial Excision of Bone, Gastrocnemius Application of Multiple Pins Beaming Wright, Medial Ex-Fix, Co-Surgeon, 2 Overnight Length of Stay, Pre-op Labs: HGA1C, ESR, CBC, CMP, EKG PRE-OP for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

On January 22, 2020, Mikhail Nagorny, an administrative law judge (ALJ), 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 inpatient surgery of the Right Foot Arthrodesis, Partial Excision of Bone, Gastrocnemius Application of Multiple Pins Beaming Wright, Medial Ex-Fix, Co-Surgeon, two Overnight Length of Stay, Pre-op Labs: HGA1C, ESR, CBC, CMP, EKG PRE-OP 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 PM, attorney.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: Claimant and MV, D.P.M.  
For Carrier: RT, D.P.M.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1 through ALJ-3  
Petitioner/Claimant's Exhibits: C-1, C-2 (pp 1-3), C-6 (pp 8-10), and C-7 (pp 1-13, 17-19).  
Respondent/Carrier's Exhibits: CR-A, CR-B, CR-D, CR-E, and CR-G.

## DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), when he slipped on a wet floor and twisted his right foot/ankle. On October 29, 2018, DH, D.P.M., observed that there was “no evidence for recurrence of the acute Charcot.” He diagnosed Claimant with pain in the right foot, type 2 diabetes, and diabetic neuropathy. On February 20, 2019, MV, D.P.M., diagnosed Claimant with stage 3 right foot Charcot neuroarthropathy and type 2 diabetes with diabetic polyneuropathy. On April 22, 2019, Dr. V noted that “[p]atient clearly has Charcot neuroarthropathy.” He suggested “surgical correction of his [Claimant’s] right foot Charcot deformity.” The June 4, 2019 CT scan showed a “Charcot foot with significant fragmentation and displacement.”

On August 2, 2019, Dr. V submitted a request for approval of Right Foot Arthrodesis, Partial Excision of Bone, Gastrocnemius Application of Multiple Pins Beaming Wright, Medial Ex-Fix, Co-Surgeon, 2 Overnight Length of Stay, Pre-op Labs: HGA1C, ESR, CBC, CMP, EKG PRE-OP. On August 7, 2019, this request was denied based on a peer review report by GP, M.D., orthopedic surgeon. On August 26, 2019, Dr. V requested a reconsideration, which was denied on September 13, 2019 based on a peer review report by GG, M.D., orthopedic surgeon. Dr. V requested a review of the denials by the Texas Department of Insurance, which assigned it to Independent Resolutions, Inc. (IRO). The notice of the IRO decision went out on October 14, 2019. The IRO reviewer upheld the unfavorable decision, and a contested case hearing was requested.

In support of his position, Claimant relied on his testimony and medical records from Dr. V, as well as Dr. V’s testimony. Dr. V testified that Claimant’s diagnosis was Charcot neuroarthropathy and that the surgery he requested was to address this diagnosis. Carrier relied on the IRO decision and testimony of RT, D.P.M., as well as peer review reports by Dr. P and Dr. G. Dr. T concurred with the IRO reviewer and both peer reviewers in that the requested surgery was not medically necessary to treat Charcot neuroarthropathy.

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(22-a) 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, 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(18-a) 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 28 Texas Administrative Code § 137.100. This Section 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 28 Texas Administrative Code § 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.

Dr. V diagnosed Claimant with right foot Charcot neuroarthropathy, as was attested to by his medical records and testimony. The requested procedure was surgery for Charcot arthropathy.

**ODG Criteria for surgery for Charcot arthropathy:**

Not recommended. Recommend bracing and orthotics.

Charcot arthropathy is a destructive process, most commonly affecting joints of the foot and ankle in diabetics with peripheral neuropathy. Affected individuals present with swelling, warmth, and erythema, often without history of trauma. Bony fragmentation, fracture, and dislocation progress to foot deformity, bony prominence, and instability. This often causes ulceration and deep infection that may necessitate amputation. Treatment should be focused on providing a stable and plantigrade foot for functional ambulation with accommodative footwear and orthoses. Foot-specific patient education and continued periodic monitoring may reduce the morbidity and associated expense of treating the complications of this disorder and may improve the quality of life in this complex patient population. (*Sanders, 2004*) (*Pinzur, 2004*) (*Trepman, 2005*) Limited evidence has been shown for the use of ultrasound fracture healing in Charcot neuroarthropathy. (*Strauss, 1998*)

Based on the evidence presented, Claimant does not meet the requirements in the ODG for the requested procedure, and he failed to present evidence 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 Right Foot Arthrodesis, Partial Excision of Bone, Gastrocnemius Application of Multiple Pins Beaming Wright, Medial Ex-Fix, Co-Surgeon, 2 Overnight Length of Stay, Pre-op Labs: HGA1C, ESR, CBC, CMP, EKG PRE-OP for the compensable injury of (Date of Injury).

The ALJ 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 New Hampshire Insurance Company, Carrier.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. Independent Resolutions, Inc., was appointed to act as IRO by the Texas Department of Insurance.
  - F. On October 14, 2019, the IRO determined that the requested procedure 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 ALJ's Exhibit Number 2.
3. Claimant does not meet the recommendations of the ODG for the requested procedure, and Claimant failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
4. Right Foot Arthrodesis, Partial Excision of Bone, Gastrocnemius Application of Multiple Pins Beaming Wright, Medial Ex-Fix, Co-Surgeon, 2 Overnight Length of Stay, Pre-op Labs: HGA1C, ESR, CBC, CMP, EKG PRE-OP are 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 Right Foot Arthrodesis, Partial Excision of Bone, Gastrocnemius Application of Multiple Pins Beaming Wright, Medial Ex-Fix, Co-Surgeon, 2 Overnight Length of Stay, Pre-op Labs: HGA1C, ESR, CBC, CMP, EKG PRE-OP are not health care reasonably required for the compensable injury of (Date of Injury).

## **DECISION**

Claimant is not entitled to Right Foot Arthrodesis, Partial Excision of Bone, Gastrocnemius Application of Multiple Pins Beaming Wright, Medial Ex-Fix, Co-Surgeon, 2 Overnight Length of Stay, Pre-op Labs: HGA1C, ESR, CBC, CMP, EKG PRE-OP 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 **NEW HAMPSHIRE INSURANCE COMPANY**, 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 78701-3218**

Signed this 23<sup>rd</sup> day of January 2020.

Mikhail Nagorny  
Administrative Law Judge