

MEDICAL CONTESTED CASE HEARING NO. 20009

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 (ALJ) determines that Claimant is not entitled to the trial of a dorsal column stimulator.

ISSUES

A contested case hearing (CCH) was held on July 16, 2020 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 a trial of a dorsal column stimulator?

PARTIES PRESENT

Petitioner/Claimant (Claimant) was present, and assisted by DB, ombudsman. Respondent/Carrier (Carrier) appeared and was represented by BJ, attorney. Due to COVID-19 precautions, the hearing was held by teleconference.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Carrier: NT, M.D.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 and ALJ-2.

Claimant's Exhibits C-1 through C-10.

Carrier's Exhibits CR-A through CR-I.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), which extends to and includes inflammation to the right ankle, left shoulder sprain, left shoulder rotator cuff and labrum tears, and complex regional pain syndrome (CRPS). Claimant testified in detail about his mechanism of injury and extensive treatment for the compensable injury, which spanned ten years. Between 2010 and 2011, Claimant underwent three surgeries to his left shoulder. Claimant testified that he continued to have left shoulder pain, with the most severe pain around the eight-inch incision from the initial left shoulder surgery. Claimant was referred to CO, M.D., for pain management in 2012. Dr. O's medical records in evidence reflect that Claimant experienced stabbing and burning left shoulder pain, numbness and tingling in the fingers of his left hand, and throbbing in his neck with movement. (C-6, Pg. 2) Dr. O administered numerous stellate ganglion blocks which provided temporary relief. Dr. O recommended a trial of a dorsal column stimulator to provide more lasting pain relief for Claimant's left upper extremity complex regional pain syndrome. Dr. O submitted his request for preauthorization.

A utilization review was completed on February 26, 2020, and the requested preauthorization was not certified. MY, M.D., an anesthesiologist performed the review and determined that Claimant did not meet the Official Disability Guidelines (ODG) criteria for proposed procedure. (C-2) Dr. Y explained that "per evidence-based guidelines, dorsal root ganglion stimulators are not recommended." (C-2, Pg. 7) Additionally, Dr. Y noted that there were limited objective findings to support the request, and use of this modality would follow a failure of a conventional spinal cord stimulator.

The initial determination and subsequent review were upheld by following an Independent Review on April 29, 2020. The review was performed by an anesthesiologist with a sub-certification in pain medicine. (C-3, Pg. 2) It was noted that the Official Disability Guidelines (ODG) recommend spinal cord stimulation for severe intractable pain of the lower limbs, but there is no such recommendation for upper limbs. Claimant timely filed an appeal of the IRO determination.

In accordance with the statutory guidance, DWC has adopted treatment guidelines by DWC 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 DWC 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, 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."

Claimant relied on the opinion of Dr. O to support his position. Dr. O authored two letters in evidence, one on May 17, 2019, (C-8) and one on July 10, 2020. (C-9) The July 10, 2020, letter directly addressed Dr. O's reasons for recommending a trial of a dorsal column stimulator to provide relief from Claimant's CRPS in his left upper extremity. Dr. O explained that Claimant had good relief from the stellate ganglion blocks performed over the years. The relief provided by the blocks, however, only lasted three to five months. Therefore, Dr. O believed that a spinal column stimulator would provide long term relief. Prior to implantation of a spinal column stimulator, Dr. O recommended a trial of a dorsal column stimulator. If Claimant had a good response to the trial, a spinal column stimulator would be the preferred treatment of Dr. O. Dr. O explained that this is the treatment of choice and the standard of care in Claimant's case as he had exhausted all more conservative modalities. Dr. O, however, did not provide any citations to evidence-based medical studies. He also did not address the concerns listed in the IRO decision. Specifically, the IRO decision stated that this procedure is not recommended for upper extremity CRPS case, and Dr. O did not provide an explanation that persuasively explained why in this case it would be recommended.

The decision of the IRO is supported by the preponderance of the evidence, including the testimony of NT, M.D., a board certified orthopedic surgeon. Dr. T provided a detailed explanation as to why a spinal cord stimulator is utilized in lower extremity CRPS cases, but not recommended in upper extremity CRPS cases. Claimant did not carry his burden of proof to establish, through evidence-based medical evidence, that the decision of the IRO should be overturned.

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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction to hear this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - D. On (Date of Injury), Employer provided workers' compensation insurance coverage through Texas Mutual Insurance Company, Carrier.
 - E. On (Date of Injury), Claimant sustained a compensable injury.

- F. The IRO determined that Claimant is not entitled to trial of a dorsal column stimulator.
- G. The compensable injury of (Date of Injury), extends to and includes inflammation to the right ankle, left shoulder sprain, left shoulder rotator cuff and labrum tear, and complex regional pain syndrome.
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 Carrier's Exhibit CR-B.
 3. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to the trial of dorsal column stimulator.

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. Claimant is not entitled to the requested trial of a dorsal column stimulator.

DECISION

Claimant is not entitled to the requested trial of a dorsal column stimulator.

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 §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
2200 ALDRICH STREET
AUSTIN, TEXAS 78723**

Signed this 24th day of July, 2020.

Amber Morgan
Administrative Law Judge