

MEDICAL CONTESTED CASE HEARING 20015

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 (ALJ) determines that Claimant is not entitled to the lumbar decompression at L2-3 and L3-4 for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On October 26, 2020, Amanda Barlow, a Division ALJ, held a medical 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 the lumbar decompression at L2-3 and L3-4 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

The hearing was held by videoconference due to the COVID-19 pandemic. Petitioner/Claimant appeared and was assisted by RH, ombudsman. Respondent/Insurance Carrier appeared and was represented by PS, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Petitioner/Claimant: (Claimant).

For Respondent/Insurance Carrier: No one.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1 through ALJ-3.

Petitioner/Claimant's Exhibits: C-1 through C-5.

Respondent/Insurance Carrier's Exhibits: CR-A through CR-F.

BACKGROUND INFORMATION

Claimant has worked for his Employer for (Number) years. On (Date of Injury), Claimant was involved in a motor vehicle accident while in the course and scope of his employment. Another vehicle ran a red light and struck Claimant's vehicle causing him injury. Insurance Carrier has accepted a compensable injury in the nature of a lumbar sprain, HNP at L2-3 with disc displacement, cervical sprain, and bilateral shoulder strains. Claimant testified that he has had treatment in the form of medications, physical therapy, lumbar surgery, and injections. Claimant's treating doctor, Dr. JG, requested lumbar decompression surgery at L2-3 and L3-4 for the compensable injury of (Date of Injury). The request was denied as not being medically necessary. It was first denied through Utilization Review and then denied by an IRO.

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."

On the date of this medical contested case hearing, the ODG provides the following with regard to decompression: Decompression may be a surgical procedure that is performed to alleviate pain caused by pinched nerves (neural impingement). For Discectomy/Laminectomy, the ODG requires symptoms or findings which confirm presence of radiculopathy. Objective findings on examination need to be present. Straight leg raising test, crossed straight leg raising, and reflex exams should correlate with symptoms and imaging.

In this case, a physician board-certified in orthopedic surgery reviewed the case. That doctor determined that the adverse determination should be upheld. The IRO doctor noted that Claimant does not have clear signs of radiculopathy associated with nerve root compression at L2-3 and L3-4. Therefore, the requested procedure was not medically necessary, appropriate, or supported by the evidence-based ODG. The IRO doctor also did not believe the surgery would resolve Claimant's back pain, due to the degenerative disc disease in Claimant's lumbar spine. Although Dr. G opined, in a letter in support of the procedure, that Claimant's pain is radicular in nature, the medical evidence was contrary to this position. In an April 29, 2020, office note, Dr. G acknowledged that Claimant does not have true damage to the nerve and does not have documented radiculopathy. After review, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to the lumbar decompression at L2-3 and L3-4.

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 the (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance as a self-insured entity (administered by (Carrier)), Insurance Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The Independent Review Organization determined Claimant should not have the lumbar decompression at L2-3 and L3-4.
 - F. The Insurance Carrier has accepted a compensable injury in the nature of a lumbar sprain, HNP at L2-3 with disc displacement, cervical sprain, and bilateral shoulder strains.

2. Insurance Carrier delivered to Claimant a single document stating the true corporate name of Insurance Carrier, and the name and street address of Insurance Carrier's registered agent, which document was admitted into evidence as an Insurance Carrier exhibit.
3. The lumbar decompression at L2-3 and L3-4 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 lumbar decompression at L2-3 and L3-4 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to the lumbar decompression at L2-3 and L3-4 for the compensable injury of (Date of Injury).

ORDER

Insurance 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 Section 408.021.

The true corporate name of the insurance carrier is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is

(NAME)
(STREET ADDRESS)
(CITY, STATE, ZIPCODE)

Signed this 27th day of October, 2020.

AMANDA BARLOW
Administrative Law Judge