

MEDICAL CONTESTED CASE HEARING 21012

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 (DWC). For the reasons discussed herein, the Administrative Law Judge (ALJ) determines that:

Claimant is not entitled to arthrodesis of the distal interphalangeal (DIP) joint, left small finger, with bone graft from iliac crest and possible fixation with Acutrak screw for the compensable injury of (Date of Injury).

Claimant did not timely appeal the adverse ruling of the Independent Review Organization (IRO).

STATEMENT OF THE CASE

A contested case hearing was held on October 19, 2021, to decide the following disputed issues:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to arthrodesis of the DIP joint, left small finger, with bone graft from iliac crest and possible fixation with Acutrak screw for the compensable injury of (Date of Injury)?

Did Claimant timely appeal the adverse ruling of the IRO?

PERSONS PRESENT

Claimant appeared and was assisted by MM, ombudsman. Insurance Carrier appeared and was represented by DO, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: None.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1 and ALJ-2

Claimant's Exhibits: C-1 through C-8. (87 PDF pages)

Insurance Carrier's Exhibits: CR-A through CR-G. (104 PDF pages)

The parties affirmed on the record that, despite any possible misnumbering or mislabeling of their respective exhibits, the PDF pages noted next to the exhibits admitted is correct.

DISCUSSION

Claimant is a (age)-year-old bus operator who fell at work while boarding a bus on (Date of Injury). She reached out with her left arm to break her fall and struck her left small finger on the floor of the bus. She was found to have sustained a nondisplaced fracture of the middle phalanx of her left small finger. Claimant is being treated by DZ, M.D., a hand specialist, for her injury. He has proposed the requested procedure to address residual deficits of the left small finger.

In accordance with statutory guidance, the 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. "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."

Dr. Z's request for approval of the surgery was reviewed by RB, M.D., who performed a utilization review for the Self-Insured. Dr. B wrote that the request for surgery came less than four weeks after the evaluation by the surgeon, and that Claimant had not received six months of conservative therapy recommended by the Official Disability Guides (ODG). This determination was reviewed at Claimant's request by CP, M.D., who found the requested surgery not to be medically necessary for the same reason. Claimant requested review of the proposed surgery by an Independent Review Organization (IRO). That review was done by an orthopedic surgeon on June 16, 2021. He stated that the records did not show that Claimant had a focused physical examination, and that it was unclear how the surgery would improve Claimant's overall functioning of the left hand versus risks of surgery. It was also unclear to the reviewer that Claimant's smoking habit had been addressed since smoking is associated with poor post-operative outcomes. The reviewer opined that medical necessity was not established for the request. The ODG provides as follows in its discussion of arthrodesis of a finger joint:

“recommended for painful conditions including severe post-traumatic arthritis of the wrist, thumb, or digit following 6 months of conservative therapy.”

Claimant offered a letter dated September 7, 2021, from her hand specialist, Dr. Z, in support of her IRO appeal. Dr. Z wrote that it is inevitable that arthritis developed from the fracture because it was an interarticular fracture, for which the treatment is arthrodesis of the joint, which will eliminate motion, but will relieve pain. This evidence did not remedy the deficiencies cited by the reviewers to show that evidence-based medicine does not support the requested treatment at this time.

Claimant sought to appeal the IRO determination for a contested case hearing. Claimant received notice of the IRO decision by certified mail on June 18, 2021. Rule 133.308 (s)((1)(A) requires that Claimant file a written appeal with the DWC’s Chief Clerk of Proceedings no later than the 20th day after the date the IRO decision was sent to the appealing party. Claimant’s DWC Form-49 requesting scheduling of a contested case hearing to appeal the IRO Decision was filed with DWC on July 22, 2021, (ALJ-2) which was not timely.

The preponderance of the evidence supports the decision of the IRO. Claimant did not carry her burden to prove through evidence-based medical evidence that the decision of the IRO should be overturned.

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, DWC.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers’ compensation coverage through self-insurance.
 - D. The IRO, in Case No. 313347, on June 16, 2021, determined that the requested arthrodesis of the DIP joint, left small finger with bone graft from iliac crest and possible fixation with Acutrak screw, is not medically reasonable and necessary for treatment of the compensable injury.

2. Self-Insured delivered to Claimant a single document stating the true corporate name of Insurance Carrier, and the name and street address of Self-Insured's registered agent, which document was admitted into evidence as Self-Insured's Exhibit CR-B.
3. The compensable injury was a non-displaced intra-articular fracture of the DIP joint of the left small finger.
4. Evidence-based medical evidence does not establish that arthrodesis of the DIP joint, left small finger with bone graft from iliac crest and possible fixation with Acutrak screw, is medically reasonable and necessary for treatment of the compensable injury of (Date of Injury).
5. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to arthrodesis of the DIP joint, left small finger with bone graft from iliac crest and possible fixation with Acutrak screw, is medically reasonable and necessary for treatment of the compensable injury of (Date of Injury).
6. The IRO Decision No. 313347 dated June 16, 2021, sent to Claimant on June 16, 2021, by certified mail which was delivered on June 18, 2021.
7. Claimant filed her appeal of the IRO decision on July 22, 2021.

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 arthrodesis of the DIP joint, left small finger with bone graft from iliac crest and possible fixation with Acutrak screw is not healthcare reasonably required for the compensable injury of (Date of Injury).
4. Claimant's appeal of IRO Decision 313347 was not timely.

DECISION

Claimant is not entitled to arthrodesis of the DIP joint, left small finger with bone graft from iliac crest and possible fixation with Acutrak screw for the compensable injury of (Date of Injury). Claimant's appeal of IRO decision 313347 was not timely.

ORDER

Self-Insured is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the self-insured is **(Self-Insured)**, and the name and address of its registered agent for service of process is:

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

Signed this 4th day of November, 2021.

Warren E. Hancock, Jr.
Administrative Law Judge