

MEDICAL CONTESTED CASE HEARING 22004

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) determined that:

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) denying the direct lateral lumbar interbody fusion at L2-3, L3-4, and L4-5.

STATEMENT OF THE CASE

A benefit review officer with the DWC held a benefit review conference on December 20, 2021, in cause number (Docket #1) to mediate resolution of the disputed issues. The parties were unable to reach an agreement. Claimant/Petitioner also filed an Independent Review Organization (IRO) appeal. On January 19, 2022, in cause number (Docket #2) IRO CASE NO. (Number), a prehearing conference was held. The cases and issues were consolidated into a single contested case hearing with the consent of the parties. Accordingly, on February 15, 2022, Kevin L. Henry, a DWC ALJ, held a contested case hearing (CCH) for both cause numbers to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO denying the direct lateral interbody fusion at L2-3, L3-4, and L4-5?

Although both docket numbers were heard at the same CCH, it was necessary to reopen the record to let the parties know that there would be two separate Decisions and Orders, one for each docket number, because of the difference in the appeal processes. The record was closed on February 23, 2022.

PARTIES PRESENT

Claimant/Petitioner appeared and was assisted by SA, ombudsman. Insurance Carrier/Respondent appeared and was represented by DM, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant/Petitioner: Claimant/Petitioner.

For Insurance Carrier/Respondent: None.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1.

Claimant/Petitioner's Exhibits: C-1 through C-14.

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

DISCUSSION

Claimant/Petitioner testified that he was employed as a delivery driver. He said that he was pushing a pallet of soft drinks on a skid up an incline when he injured his lower back.

Claimant/Petitioner relied upon the report of designated doctor, NM, D.C., that he had not yet reached maximum medical improvement (MMI) because he had not received the needed surgery to his lumbar spine. Dr. M stated that laminectomy at L3-4 and L4-5 is necessary for Claimant/Petitioner to improve. Claimant/Petitioner testified at the CCH that his treating physician, SN, M.D., told him that laminectomy would not help him. Claimant/Petitioner testified that he did not want a laminectomy. Claimant/Petitioner testified that he wanted to have the direct lateral lumbar interbody fusion at L2-3, L3-4, and L4-5 which was denied by the IRO. Claimant/Petitioner relied on the records and letter of medical necessity from Dr. N that the only treatment that would help Claimant/Petitioner was the direct lateral lumbar interbody fusion at L2-3, L3-4, and L4-5. Dr. N stated in his letter of necessity that the disc herniations are not enough to cause direct compression of the nerve root. Dr. N stated that he felt that there was fluid leaking from the herniation onto the nerve root, and the only treatment was the fusion surgery. Insurance Carrier/Respondent relied on the IRO peer reviews and the opinion of KE, M.D. Dr. E provides a persuasive explanation regarding the reasons that the fusion is not medically necessary for Claimant/Petitioner. Therefore, it is determined that the preponderance of the evidence is not contrary to the IRO in this case.

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/Petitioner was the employee of (Employer), Employer.

- C. On (Date of Injury), Employer provided workers' compensation insurance with the Indemnity Insurance Company of North America, Insurance Carrier/Respondent.
 - D. On (Date of Injury), Claimant/Petitioner sustained a compensable injury.
 - E. Claimant/Petitioner's compensable injury has been found to extend to and include a lumbar sprain and aggravation of L3-4 and L4-5 disc displacement for the purposes of determining MMI and impairment rating.
 - F. NM, D.C., was appointed by the DWC as designated doctor to determine MMI and impairment rating.
 - G. KE, M.D., was selected as the required medical examination doctor to determine MMI and impairment rating.
 - H. On all dates relevant to this case, Dr. M and Dr. E were properly authorized to assign impairment rating evaluations in accordance with 28 Texas Administrative Code §130.1.
 - I. There are no other conditions or diagnoses to be adjudicated for this case.
 - J. The date of statutory MMI is January 30, 2022.
 - K. For the purposes of this hearing, the terms sprain and strain will be synonymous.
2. Insurance Carrier/Respondent delivered to Claimant/Petitioner a single document stating the true corporate name of Insurance Carrier/Respondent, and the name and street address of Insurance Carrier/Respondent's registered agent, which document was admitted into evidence as an Insurance Carrier/Respondent's Exhibit in both claims.
 3. The direct lateral lumbar interbody fusion at L2-3, L3-4, and L4-5 is not health care reasonably required or necessary 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 denying the direct lateral lumbar interbody fusion at L2-3, L3-4, and L4-5.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO denying the direct lateral lumbar interbody fusion at L2-3, L3-4, and L4-5.

ORDER

Insurance Carrier 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 Texas Labor Code §408.021.

The true corporate name of the Insurance Carrier/Respondent is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA**, and the name and address of its registered agent for service of process is:

**C T CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136**

Signed this 2nd day of March 2022.

Kevin L. Henry
Administrative Law Judge