

MEDICAL CONTESTED CASE HEARING 22005

DECISION

Claimant appealed the decision of the Independent Review Organization in Case Number 314861.

The hearings for this appeal were held on January 26, 2022, and March 3, 2022, and the record closed on March 9, 2022. For the reasons discussed below, the administrative law judge (ALJ) decides:

Claimant is entitled to endoscopic right carpal tunnel release for the compensable injury of (Date of Injury).

Issue

At the contested case hearing of January 26, 2022, and March 3, 2022, Christopher M. Maisel, an ALJ, considered the following unresolved issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to endoscopic right carpal tunnel release?

The record remained open for the Claimant to submit the initial request for preauthorization. Claimant was not able to locate a written request and the record was closed on March 9, 2022.

Persons Present

At the January 26, 2022, hearing Claimant appeared and was assisted by MM, ombudsman. Insurance Carrier failed to appear. The hearing was reset without the issuance of a 10 day letter, because proper notice was not sent to Insurance Carrier. The matter was rescheduled for March 3, 2022.

At the March 3, 2022, hearing, Claimant appeared and was assisted by MM, ombudsman. Insurance Carrier appeared and was represented by JL, attorney.

Evidence Presented

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibits: ALJ-1 and ALJ-2

Claimant Exhibits: C-1 through C-17

Insurance Carrier Exhibits: CR-A through CR-C

Discussion

Claimant testified that on (Date of Injury), he was probing a pipeline with a crowbar. He thrust the bar deep into the ground and when he was pulling it up with both hands, his wrist popped and began swelling. He testified that he experienced wrist tingling, throbbing, and aching in both hands. He called his supervisor and reported it. He was sent to a (HCP) for treatment.

The parties stipulated that Claimant sustained a compensable injury on (Date of Injury), and it extended to and included bilateral carpal tunnel syndrome.

Claimant requested preauthorization of an endoscopic right carpal tunnel release surgery. Dr. MH, Claimant's surgeon, requested the preauthorization. His request was denied and upon reconsideration it was also denied. He then appealed for an Independent Review Organization to review the denial. C-IRO Inc. was certified and appointed by the Texas Department of Insurance as an Independent Review Organization (IRO). C-IRO performed the review and sent the parties its Amended Notice of Independent Review Decision on July 21, 2021. As noted by the IRO an orthopedic surgeon performed the review. The IRO review upheld the previous adverse determinations. The IRO indicated it reviewed the EMG and Nerve Conduction Report, and Clinical records of June 2, 2021, May 9, 2021, and June 30, 2021, and utilization reviews of June 4, 2021, and June 15, 2021.

To determine if treatment is medically necessary, Texas law requires the Division of Workers' Compensation (DWC) to use treatment guidelines. These guidelines must be evidence-based, scientifically valid, and outcome-focused. Use of these guidelines ensures that an injured employee will receive reasonable and necessary health care. (*See* Texas Labor Code §413.011(e) and 413.017(1).) DWC uses the current edition of the *Official Disability Guidelines (ODG)*. If the *ODG* does not address the requested treatment, then other guidelines or generally accepted standards of practice recognized in the medical community are used.

Both the June 4, 2021, review and the June 15, 2021, reconsideration review set forth the Official Disability Guidelines (ODG) requirements for right endoscopic carpal tunnel release. These guidelines provide part I and II and set forth the requirements that must be met to obtain approval of the surgery. Part I for Severe CTS includes a requirement that there must be muscle atrophy, severe weakness of thenar muscles. This requirement was not met because there was no clinical support for atrophy. Part II is an alternative to qualifying under Part I. It sets forth the requirements for Non severe CTS, II A through E.

In the June 15, 2021, Reconsideration Request for Right Endoscopic Carpal Tunnel Release, the reviewer stated that:

ODG Guidelines only supports surgery for a carpal tunnel syndrome for individuals with corresponding symptoms and objective findings who have failed to improve with at least 3 measures of conservative treatment. Physical examination of this injured employee dated 6/2/21 only reveals an isolated examination finding of decreased monofilament testing. There is no physical examination performed indicating any positive compression test, Phalen's test, Tinel's test, or decreased two-point discrimination. No muscular atrophy was noted. Additionally, splinting is only first recommended on this date and there is no mention of any previous steroid injection. Absent both objective findings and without exhausting conservative care, this request for a right endoscopic carpal tunnel release is not medically necessary.

The citation to the June 2, 2021, records indicates that the reviewers examined and relied on Dr. H's records. It is apparent that reviewers and the IRO did not have all of the (HCP's) records. The (HCP's) records contained multiple instances of positive Phalen's test and Tinel's test findings. Splinting was also documented in the (HCP's) records and the IRO amended decision stated "Splinting" was provided. The records also noted physical therapy prescribed on multiple occasions, and the physical therapy records indicated Claimant was given guidelines for his home exercise program. The medical records in evidence contradict the basis of the reviewers and the IRO's, determination. Claimant does not need to have a steroid injection if he meets 3 of the 5 conservative treatments set forth in ODG Indications for Surgery-Carpal Tunnel Release Part II D. The evidence supports that Claimant met at least three of the requirements in part II D. It is also noted that the IRO stated a steroid injection was received by Claimant.

The ALJ finds that the reviewers and the IRO did not examine the records from (HCP) which were in evidence (C-7). These records cover a period from March 24, 2021, through August 19, 2021. Nor did they examine the (HCP's) physical therapy records (C-8), which cover from April 5, 2021, through April 19, 2021.

Claimant testified that the same surgery procedure was approved by a different IRO for the left side and when he attempted to communicate information and documents to the IRO herein, the adjuster told him he was not allowed to have contact with the IRO.

In this dispute, Claimant has the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong.

Claimant relied on his testimony and the medical records in evidence to support his position of entitlement to the disputed treatment. Insurance Carrier relied on the medical records in evidence, to support its position that Claimant is not entitled to the requested treatment.

After careful consideration of the evidence, the ALJ finds that the stated basis for the denial of the requested procedure and the upholding of those denials by the IRO was not supported by the medical evidence. The IRO and the reviewers did not base their determinations on complete medical records. The medical records in evidence contradict their conclusions in applying the ODG requirements. Moreover, the preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to endoscopic right carpal tunnel release.

The ALJ considered all the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all the evidence, whether or not the evidence is specifically discussed in this Decision.

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)
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Old Republic Insurance Company, Insurance Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The compensable injury of (Date of Injury), extends to and includes bilateral carpal tunnel syndrome.
 - F. The Independent Review Organization decision upheld Insurance Carrier's denial of the endoscopic right carpal tunnel release.
 - G. The Independent Review Organization decision was sent to the parties on July 21, 2021.
 - H. On August 2, 2021, Claimant filed this appeal of the Independent Review Organization decision with the Division of Workers' Compensation. The appeal was filed within twenty days from the date of the Independent Review Organization decision was sent to the parties.
2. Insurance Carrier delivered to Claimant a document stating Insurance Carrier's true corporate name and the registered agent's name. This document was admitted into evidence.
3. Claimant's symptoms included physical signs of positive Phalen and Tinel's testing.

4. Initial conservative treatment of Claimant included activity modification, night wrist splint, and home exercise training provided by a therapist.
5. The preponderance of the evidence-based medical evidence is contrary to the decision of the Independent Review Organization that Claimant is not entitled to endoscopic right carpal tunnel release 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 contrary to the decision of the IRO that Claimant is not entitled to endoscopic right carpal tunnel release.
4. Claimant is entitled to endoscopic right carpal tunnel release for the compensable injury of (Date of Injury).

Order

Insurance Carrier is liable for the benefits in dispute 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 **OLD REPUBLIC INSURANCE COMPANY**. The name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
211 EST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed on the 14th day of March, 2022,

Administrative Law Judge
Christopher M. Maisel