

MEDICAL CONTESTED CASE HEARING NO 22010

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 determines Claimant is not entitled to the Cervical Posterior Spine Fusion and Laminectomy at C3-C4, C4-C5, C5-C6, C6-C7 with possible removal and reinsertion of instrumentation neuroplasty of dura and nerve roots with spinal monitoring and 3 inpatient days for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On July 26, 2022, Amanda Barlow, a Division administrative law judge, 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 the Claimant is not entitled to the Cervical Posterior Spine Fusion and Laminectomy at C3-C4, C4-C5, C5-C6, C6-C7 with possible removal and reinsertion of instrumentation neuroplasty of dura and nerve roots with spinal monitoring and 3 inpatient days for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant did not appear and did not respond to the Division's 10-day letter. Respondent/Insurance Carrier appeared and was represented by RS, attorney.

EVIDENCE PRESENTED

No witnesses testified.

The following exhibits were admitted into evidence:

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

Petitioner/Claimant's Exhibits: None.

Respondent/ Insurance Carrier's Exhibits: CR-A and CR-B.

BACKGROUND INFORMATION

Although properly notified, Claimant failed to appear for the contested case hearing scheduled on July 26, 2022. A 10-day letter was sent to Claimant on July 26, 2022, advising him that the hearing had convened, that the record was opened and developed, and that the record would be held open for 10 days after receipt of the letter to afford Claimant the opportunity to respond in writing, show good cause for his failure to appear at the hearing, and request that the hearing be rescheduled to permit him to present evidence on the disputed issue. Claimant failed to respond in writing to the 10-day letter as required by Rule 142.11(a), and the record was closed on August 18, 2022.

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, 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 failed to appear, and no evidence was offered on his behalf. Thus, Claimant did not meet his burden of proof.

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. Insurance Carrier 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), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with TPCIGA for Lumbermens Mutual Casualty Company Estate No. 842, Insurance Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The IRO determined Claimant should not have the Cervical Posterior Spine Fusion and Laminectomy at C3-C4, C4-C5, C5-C6, C6-C7 with possible removal and reinsertion of instrumentation neuroplasty of dura and nerve roots with spinal monitoring and 3 inpatient days.
2. The Division sent a single document stating the true corporate name of the Insurance Carrier and the name and street address of Insurance Carrier's registered agent for service with the 10-day letter to the Claimant at Claimant's address of record. That document was admitted into evidence as an Insurance Carrier's exhibit.

3. The Cervical Posterior Spine Fusion and Laminectomy at C3-C4, C4-C5, C5-C6, C6-C7 with possible removal and reinsertion of instrumentation neuroplasty of dura and nerve roots with spinal monitoring and 3 inpatient days is not health care reasonably required for the compensable injury of (Date of Injury).
4. Claimant failed to appear for the July 26, 2022, contested case hearing and did not respond to the Division's letter offering him the opportunity to have the hearing rescheduled.
5. Claimant did not have good cause for failing to appear at the contested case hearing.

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 Cervical Posterior Spine Fusion and Laminectomy at C3-C4, C4-C5, C5-C6, C6-C7 with possible removal and reinsertion of instrumentation neuroplasty of dura and nerve roots with spinal monitoring and 3 inpatient days is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to the Cervical Posterior Spine Fusion and Laminectomy at C3-C4, C4-C5, C5-C6, C6-C7 with possible removal and reinsertion of instrumentation neuroplasty of dura and nerve roots with spinal monitoring and 3 inpatient days 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 Texas Labor Code Section 408.021.

The true corporate name of the insurance carrier is **TPCIGA FOR LUMBERMENS MUTUAL CASUALTY COMPANY, AN IMPAIRED CARRIER, ESTATE NO. 842**, and the name and address of its registered agent for service of process is:

**MARVIN KELLY
TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION
9120 BURNET ROAD
AUSTIN, TEXAS 78758**

Signed this 18th day of August, 2022.

AMANDA BARLOW
Administrative Law Judge