

MEDICAL CONTESTED CASE HEARING NO 22013

DECISION

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

The hearing for this appeal was held on November 14, 2022. For the reasons discussed below, the Administrative Law Judge decides:

Claimant is not entitled to an L2-L4 extreme lateral interbody fusion (XLIF) and L2-S1 revision posterior spinal fusion (PSF) under general anesthesia, as an inpatient, for the compensable injury of (Date of Injury).

ISSUE

At the hearing, Carol A. Fougerat, Administrative Law Judge, considered the following unresolved issue:

Is Claimant entitled to an L2-L4 extreme lateral interbody fusion (XLIF) and L2-S1 revision posterior spinal fusion (PSF) under general anesthesia, as an inpatient, for the compensable injury of (Date of Injury)?

PERSONS PRESENT

Claimant appeared and was assisted by LR, ombudsman. Insurance Carrier appeared and was represented by GS, attorney.

EVIDENCE PRESENTED

No witnesses testified at the contested case hearing.

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibit: ALJ-1

Claimant Exhibits: C-1 through C-7 (162 pdf pages)

Insurance Carrier Exhibits: CR-A through CR-I (55 pdf pages)

DISCUSSION

Claimant was employed by (Employer) as a senior equipment technician, and he sustained an injury on (Date of Injury), when he was picking up a piece of equipment and as he was lifting and turning, he felt a pop in his low back. As a result of this injury, Claimant underwent physical therapy, injections, and an L2-3 microdiscectomy and decompression surgery, which was performed on July 6, 2021. Claimant had undergone lumbar spine surgeries prior to this injury, including a lumbar fusion in 2007. Due to ongoing symptoms, Claimant underwent an EMG/NCV on December 17, 2021, and an MRI of the lumbar spine on January 12, 2022. Claimant's treating surgeon, JT, M.D., recommended the surgical procedures at issue.

The parties stipulated that Claimant sustained a compensable injury on (Date of Injury), in the form of an L2-3 herniation/extrusion. Claimant was recommended to undergo an L2-L4 XLIF and L2-S1 revision PSF under general anesthesia, as an inpatient. This request for surgery was denied by Insurance Carrier. Claimant then appealed for an Independent Review Organization (IRO) to review the denial.

The IRO, identified as an orthopedic surgeon, performed the review and sent the parties its Notice of Independent Review Decision on May 15, 2022. The IRO upheld the denial of the disputed procedure. Claimant appealed the IRO decision on May 31, 2022.

To determine if treatment is medically necessary, Texas law requires 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.

In this dispute, Claimant had the burden of showing, by the preponderance of the evidence-based medical evidence, that the IRO decision is incorrect. Claimant relied on his testimony and the medical records in evidence to support his position of entitlement to the disputed procedures. Insurance Carrier relied on the medical records in evidence and the IRO decision to support its position that Claimant is not entitled to the requested procedures.

Dr. T submitted a preauthorization request for an L2-L4 XLIF and L2-S1 revision PSF under general anesthesia, as an inpatient. A Utilization Review Peer Reviewer Response was provided by Dr. GG, a board-certified orthopedic surgeon. Dr. G cited the ODG for the proposed lumbar surgical intervention. He also stated that it was unclear why multilevel fusions were requested, and noted that there were normal neurological examinations and that no flexion/extension radiographs were performed to indicate any objective evidence of instability. He concluded that the request for a multilevel fusion was not certified. Dr. G's notes documented attempts to contact Dr. T for a peer-to-peer conversation, but those attempts failed.

Dr. GP, board-certified orthopedic surgeon, performed a utilization review regarding the proposed lumbar surgery. Dr. P referred to the ODG treatment recommendations and questioned why a fusion was being requested at L2-3 as opposed to a decompression, and why a fusion was requested at L3-4. He concluded that without additional justification, the request for a multilevel fusion procedure was not supported. Dr. P's report also noted failed attempts to contact Claimant's treating surgeon.

The IRO reviewer, identified as a medical doctor specializing in orthopedic surgery, issued a decision on May 15, 2022. This decision indicated the requested procedure was not medically necessary or appropriate. The IRO considered the MRI reports and the medical records and stated that the records did not reflect presence of instability at L2-3 or L3-4, and that there was no evidence of nerve root impingement on the left side at L2-3, which would correlate with Claimant's symptoms. The IRO went on to state that there was no nerve root impingement at L3-4 identified on the MRI, and that the records did not indicate the rationale for a fusion procedure at L2-3 and L3-4. The IRO also opined that a posterior spinal fusion was not necessary at L4-5 or L5-S1 as there was a prior fusion at those levels.

Claimant offered the medical records from Dr. T and his diagnostic studies to support his contention that the IRO determination was inaccurate. Claimant's argument was thorough and passionate regarding his symptoms, treatment, and difficulty with the workers' compensation process. Claimant also cited evidence-based internet articles he obtained through his research. However, Claimant failed to meet his burden to establish that the preponderance of the evidence-based medical evidence was contrary to the determination of the IRO. Claimant raised the concern that the utilization reviewers and the IRO did not actually ever speak with Dr. T to discuss the proposed procedures;

however, Dr. T did not provide a written response or opinion to support that the proposed procedures were medically necessary treatment for Claimant's compensable injury, nor did he opine that Claimant's condition met the ODG requirements.

After consideration of the evidence, the Administrative Law Judge finds that the ODG addresses the proposed surgical procedures and those requirements do not support the necessity of the disputed procedures. The evidence offered did not provide a persuasive explanation using evidence-based medicine of how the disputed treatment is necessary. Claimant did not meet his burden of proof to establish by the preponderance of the evidence-based medicine that he is entitled to the disputed procedures. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to the disputed procedures.

The Administrative Law Judge 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, DWC.
 - B. On (Date of Injury), Claimant was employed by (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Samsung Fire & Marine Insurance Company, LTD., Insurance Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury in the form of an L2-3 herniation/extrusion.
 - E. Dr. T requested preauthorization for an L2-L4 extreme lateral interbody fusion (XLIF) and L2-S1 revision posterior spinal fusion (PSF) under general anesthesia, as an inpatient.
 - F. Insurance Carrier denied preauthorization for the requested procedure.

- G. The IRO upheld Insurance Carrier's denial of preauthorization for an L2-L4 XLIF and L2-S1 revision PSF under general anesthesia, as an inpatient.
- 2. Insurance Carrier delivered to Claimant a document stating Insurance Carrier's true corporate name and the registered agent's name and address. This document was admitted into evidence.
- 3. The IRO decision was sent to the parties on May 15, 2022.
- 4. On May 31, 2022, Claimant filed this appeal of the IRO decision with DWC. The appeal was filed within 20 days from the date the IRO decision was sent to the parties.
- 5. The preponderance of the evidence-based medical evidence is not contrary to the decision of the IRO that Claimant is not entitled to an L2-L4 XLIF or L2-S1 revision PSF under general anesthesia, as an inpatient, for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

- 1. The Texas Department of Insurance, DWC, has jurisdiction to hear this case.
- 2. Claimant is not entitled to an L2-L4 XLIF or L2-S1 revision PSF under general anesthesia, as an inpatient, for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier is not 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 **SAMSUNG FIRE & MARINE INSURANCE COMPANY, LTD.**, and the name and address of its registered agent for service of process is:

**CT CORPORATION
1999 BRYAN ST., SUITE 900
DALLAS, TX 75201-4284**

Signed this 15th day of November 2022.

Carol A. Fougerat
Administrative Law Judge