

## **MEDICAL CONTESTED CASE HEARING NO 25008**

### **Decision**

For the reasons discussed, the administrative law judge determines that:

The Division has jurisdiction to determine whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO case number \_\_\_\_ ) that the claimant is not entitled to Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires) for the compensable injury of (Date of Injury).

The preponderance of the evidence is contrary to the decision of the Independent Review organization (IRO number \_\_\_\_ ) that the claimant is not entitled to Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) and Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires) for the compensable injury of (Date of Injury).

### **Statement of the Case**

Judge Cole Fulks held a hearing on June 30, 2025, with the record closing on July 9, 2025, to decide the following:

1. Does the Division has jurisdiction to determine whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO number \_\_\_\_ ) that the claimant is not entitled to Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires) for the compensable injury of (Date of Injury)? (The judge added the issue and it was amended to conform to the issue actually litigated.)
2. Is the preponderance of the evidence contrary to the decision of the Independent Review organization (IRO number \_\_\_\_ ) that the claimant is not entitled to Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) and Zynex Nexwave unit and monthly supplies for left



With regard to whether the Division has jurisdiction to whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization, the Division of Workers' Compensation has adopted treatment guidelines by 28 Texas Administrative Code Section 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 28 Texas Administrative Code Section 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 (CCH), 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."

With regard to the jurisdiction issue, it is determined that the Division has jurisdiction to determine whether the preponderance of the evidence is contrary to the decision of the IRO in this case.

To determine if treatment is medically necessary, Texas law requires the Division 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. The Division uses the current edition of the *Official Disability Guidelines*. If the *Official Disability Guidelines* does not address the requested treatment, then other guidelines or generally accepted standards of practice recognized in the medical community are used.

The IRO reviewer detailed the *Official Disability Guidelines* criteria for the Zynex Nexwave unit and supplies for the left shoulder. The IRO reviewer determined the requested unit and supplies were not medically necessary when compared to the *Official Disability Guidelines* criteria.

The claimant relied on her testimony and documentation, and a letter provided by Dr. RN, her treating doctor, to support her position. The claimant's testimony and evidence was carefully considered. It was determined that the preponderance of the evidence was contrary to the decision of the IRO that the claimant was not entitled to Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) and Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires).

The judge considered all the evidence admitted and based the findings of fact and conclusions of law on the evidence, even if the judge did not specifically discuss all the evidence.

### **Findings of Fact**

1. The parties stipulated to the following facts:
  - A. The (City) field office is the proper location for the hearing.
  - B. On (Date of Injury), the claimant was an employee of (Employer).
  - C. On (Date of Injury), the employer provided workers' compensation insurance through New Hampshire Insurance Company.
  - D. On (Date of Injury), the claimant sustained a compensable injury.
  - E. The claimant reached maximum medical improvement on December 28, 2020.
  - F. The claimant's impairment rating is 14%.
2. The insurance carrier delivered to the claimant a document stating the true corporate name of the insurance carrier, the name of the insurance carrier's registered agent, and the registered agent's street address, which was admitted into evidence.
3. Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) and Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires) is health care reasonably required for compensable injury of (Date of Injury).
4. Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) and Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires) is health care reasonably required 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 Division has jurisdiction to determine whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO case number \_\_\_\_ ) that the claimant is not entitled to Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires) for the compensable injury of (Date of Injury).
4. The preponderance of the evidence is contrary to the decision of the Independent Review organization (IRO number \_\_\_\_ ) that the claimant is not entitled to Zynex Nexwave supplies for left shoulder (electrodes, replacement batteries, lead wires) and Zynex Nexwave unit and monthly supplies for left shoulder (1 unit, 384 electrodes, 48 replacement batteries, 6 pair of lead wires) for the compensable injury of (Date of Injury).

### **Order**

The insurance carrier is ordered to pay benefits pursuant to this decision. The insurance carrier shall pay any accrued but unpaid income benefits in a lump sum with interest as provided by law.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218**

Signed on July 17, 2025.

Cole Fulks  
Administrative Law Judge