

**MEDICAL CONTESTED CASE HEARING NO 25010**

**Decision**

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

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that the claimant is not entitled to anterior cervical discectomy and fusion surgery at C4-C5, C5-C6, and C6-C7 levels for the compensable injury of (Date of Injury).

**Statement of the Case**

A contested case hearing was held on July 24, 2025, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that the claimant is not entitled to anterior cervical discectomy and fusion surgery at C4-C5, C5-C6, and C6-C7 levels for the compensable injury of (Date of Injury)? (The parties agreed to amend this issue.)

**Persons Present**

The claimant appeared and was assisted by LG, ombudsman. The insurance carrier appeared and was represented by LM, attorney.

**Evidence Presented**

The following witnesses testified:

For the claimant: The claimant

For the insurance carrier: None

The judge admitted the following exhibits into evidence:

Judge’s Exhibit: ALJ-1

Claimant’s Exhibits: C-1 through C-8

Insurance Carrier’s Exhibits: CR-A through CR-H

The claimant affirmed there were 80 pages of Claimant's Exhibits. The insurance carrier affirmed there were 234 pages of Insurance Carrier's Exhibits. It should be noted that the records from (City) Physical Therapy noted as Pending in Claimant's Exhibit C-9 are included as Exhibit CR-F in Insurance Carrier's Exhibits.

### **Discussion**

The claimant testified that on (Date of Injury), he was injured in a work-related accident involving a flipped water truck. The claimant suffered multiple spinal fractures, leading to multi-level posterior fusions with pedicle screw fixation done March 1, 2024, from T6-T9 and also T10-L2. Post-operative studies confirm normal vertebral body and facet alignment at all levels with mild degenerative changes noted, without hardware failure. Extensive physical therapy ensued to the back and legs, with good results in restoring ambulation, although limited by pain. The claimant's recovery may have been complicated by a hospitalization for (condition) in September, 2024. (Exhibit CR-F/ p. 120, 135) By November, 2024, the surgeon seemed to feel that the claimant had reached a plateau and should be discharged from physical therapy (Exhibit CR-F/p. 116). Physical therapy continued, however, through January, 2025, with left shoulder weakness noted after the September hospitalization (Exhibit CR-F/ p. 143) and a recommendation for physical therapy to this region, as well as a recommendation for a follow-up with the claimant's primary care physician for the shoulder issue. The claimant requested an orthopedic referral (Exhibit C-8/p. 40). The orthopedic surgeon, JB, M.D., ordered an MRI of the cervical spine, which was done on January 30, 2025, with some abnormalities noted (Exhibit C-7/p. 1-2). Dr. B then recommended a C4-5, C5-6 and C6-7 cervical fusion, noting neck spasm, absent reflexes, decreased range of motion and a positive spurling sign to the left (Exhibit C-6/p. 11). The request for surgery was denied as not medically necessary, which led to the current appeal (Exhibit C-6/ p. 3).

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. See Texas Labor Code Section 413.011(e) and 413.017(1) The Division uses the current edition of the Official Disability Guidelines (ODG). 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 specific ODG Criteria for cervical fusion surgery provides:

ODG Criteria Anterior cervical fusion may be indicated for 1 or more of the following (1) (2) (3) : Adjacent segment disease (ie, degenerative spinal segment directly next to decompression or fusion procedure that was previously done) and 1 or more of the following (4) (5) : Cervical myelopathy with symptoms consistent with disease adjacent to prior spinal procedure and ALL of the following are present: Imaging (eg, cervical spine computed tomography [CT] scan, cervical spine magnetic resonance imaging [MRI]) confirms compression of cervical spinal cord in adjacent segment consistent with symptoms. Neck or arm pain causing interference with daily function Patient is nonsmoker, has been nicotine-free for 6 weeks prior to surgery, or surgery is required urgently due to hardware failure or neurologic compromise (eg, progressive weakness, severe weakness, spinal cord compression/myelopathy).

Cervical radiculopathy with symptoms consistent with disease adjacent to prior spinal procedure and ALL of the following are present; Failure of symptoms to improve after 1 or more of the following: Physical therapy for 3 months Treatment with nonsteroidal anti-inflammatory drug (NSAID) or steroid for 3 months Worsening neck or radicular pain despite treatment with NSAID, physical therapy, or steroid Imaging (eg, cervical spine CT scan, cervical spine MRI) confirms compression of cervical nerve root in adjacent segment consistent with symptoms. Neck or arm pain causing interference with daily function Patient is nonsmoker, has been nicotine-free for 6 weeks prior to surgery, or surgery is required urgently due to hardware failure or neurologic compromise (e.g., progressive weakness, severe weakness, spinal cord compression/myelopathy).

(Exhibit CR-D/p. 9, 13-14)

In the instant case, the medical peer review report done as part of the Independent Review Organization (IRO) review found that the requested procedure was not medically necessary for two reasons: (1) there were insufficient examination findings to support the surgical request (no clear evidence of myelopathy); and (2) it was unclear if the patient had attempted appropriate conservative treatment for the cervical spine, as the physical therapy had been concentrated on the lumbar spine and the left shoulder.

(Exhibit CR-D/p. 9)

The IRO reviewed the documents submitted and upheld the denial of the requested surgery. (Exhibit CR-E/ p.13-14)

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. The judge reviewed the evidence presented and finds that the preponderance of the evidence-based medicine is not contrary to the IRO decision. The claimant has failed to meet his burden of proof in this matter.

The judge considered all the evidence admitted and based his 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), which provided workers' compensation insurance through self-insurance.
  - C. On (Date of Injury), the claimant sustained a compensable injury.
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. The IRO determined that the proposed anterior cervical discectomy and fusion surgery at C4-5, C5-6, and C6-7 levels was not medically necessary.
4. The preponderance of the evidence-based medicine is not contrary to the IRO decision that the anterior cervical discectomy and fusion surgery at C4-5, C5-6, and C6-7 levels was not healthcare 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 preponderance of the evidence is not contrary to the decision of the Independent Review Organization that the claimant is not entitled to anterior cervical discectomy and fusion surgery at C4-5, C5-6, and C6-7 for the compensable injury of (Date of Injury).

### **Order**

The insurance carrier is not liable for the benefits at issue in this hearing. The claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code Section 408.021.

### **Service of Process**

The true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**(NAME)**  
**(ADDRESS)**

Signed on August 4, 2025.

Paul Armstrong  
Administrative Law Judge