

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on April 28, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a left sided sacroiliac fusion with a 3-day hospital stay is not reasonably required health care for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RH, ombudsman. Respondent/Carrier appeared and was represented by PM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury). Claimant has undergone extensive treatment with little relief. Ultimately, Claimant had bilateral sacroiliac injections and a right-sided sacroiliac fusion. The injections and fusion were performed by KB, MD. The right sided sacroiliac fusion provided significant pain relief on the right. Claimant's left sided sacroiliac pain persisted and Dr. B recommended a sacroiliac fusion on the left. Carrier denied preauthorization and Carrier's denial was appealed through the Independent Review Organization (IRO) process.

The Texas Department of Insurance appointed Casereview as the IRO. On February 17, 2013, the IRO upheld Carrier's denial of a left sided sacroiliac joint fusion with a 3-day hospital stay. The IRO physician reviewer was identified as a board certified orthopedic surgeon with over 13 years of experience. He reviewed Claimant's medical records and cited his medical judgment, clinical experience and expertise and the Official Disability Guidelines (ODG) in support of his opinion that the left sided sacroiliac joint fusion with an attendant hospital stay was not reasonably necessary health care for the compensable injury. In part, the physician reviewer stated that Claimant should be fully recovered from the right sacroiliac fusion before the left side could be determined to be a source of pain. He opined that a left sided intra-articular joint injection should be performed before the left sided fusion is approved.

Dr. B testified that Claimant had undergone bilateral sacroiliac joint injections and had significant relief from the injection. Medical records cited by the IRO physician reviewer note that Claimant has undergone two sacroiliac joint injections and that the first afforded significant relief from her chronic pain while the second afforded relief for a shorter period. Dr. B does not agree that additional sacroiliac joint injections are needed. He testified that the positive response on the left with a subsequent recurrence of pain on the left is adequate confirmation of the source of Claimant's pain. He also testified that the success of the right sided fusion with ongoing pain on the left also indicates that a left sided sacroiliac fusion is a viable treatment for Claimant's ongoing pain.

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 in making decisions about the care of individual patients. 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 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 is considered a party to an appeal. In a division 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."

Dr. B testified that Claimant has met the requirements in the ODG for the proposed left sided sacroiliac joint fusion. The ODG provides the following guidance for sacroiliac joint fusion:

Not recommended except as a last resort for chronic or severe sacroiliac joint pain (see indications below). The surgery has been reported to result in benefit in selected cases, but no high quality studies have been conducted on sacroiliac joint fusion. The largest of the related studies was conducted with 20 carefully selected patients. The trial concluded that sacroiliac joint fusion might be a safe, well tolerated, and successful procedure, leading to significant improvement in functional outcome and a high fusion rate. More high quality studies need to be conducted. (Buchowski, 2005) (Sherman, 2004) (Giannikas, 2003) (Guner, 1998) See also Percutaneous sacroiliac joint fusion.

Indications for SI Joint Fusion:

- Failure of nonoperative treatment
- Chronic pain lasting for years
- Diagnosis confirmed by pain relief with intraarticular sacroiliac joint injections under fluoroscopic guidance - positive response to the injection was noted, and patients had recurrence of symptoms after the initial positive
- Preoperative and postoperative general health and function assessed
- Medical records and plain radiographs have been reviewed retrospectively to determine the clinical and radiographic outcome

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See Black vs. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995).

Dr. B's opinion, that Claimant's history and condition are consistent with the indications for a sacroiliac joint fusion in the ODG, is supported by the evidence. Claimant has chronic pain that has lasted for years and has not responded to nonoperative treatment. The bilateral injection provided relief and, as testified by Dr. B, confirmed the left side of the sacroiliac joint as a source of Claimant's pain. After the bilateral sacroiliac injection, Claimant's left-sided symptoms recurred. Dr. B noted that Claimant obtained pain relief on the right after the right-sided fusion and expressed his opinion that a left-sided fusion is necessary to provide relief from Claimant's severe chronic left-sided pain. The preponderance of the evidence-based medical evidence in this matter is contrary to the IRO determination that a left-sided sacroiliac joint fusion with a 3-day hospital stay is not health care reasonably required for the compensable injury of (Date of Injury).

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

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), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Association Casualty Insurance Company, Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. KB, MD requested preauthorization for a left-sided sacroiliac joint fusion with a 3-day hospital stay.
 - F. Carrier denied preauthorization for the requested left-sided sacroiliac joint fusion with a 3-day hospital stay.
 - G. The Texas Department of Insurance appointed Casereview as the Independent Review Organization.
 - H. The Independent Review Organization upheld Carrier's denial of preauthorization for the left-sided sacroiliac joint fusion with 3-day hospital stay.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The ODG does not recommend sacroiliac joint fusion except as a last resort for chronic or severe sacroiliac joint pain and there has been a failure of nonoperative treatment with chronic pain lasting for years, and the diagnosis has been confirmed by pain relief with intraarticular sacroiliac joint injections under fluoroscopic guidance by a positive response to the injection and a recurrence of symptoms after the initial positive response.
4. Claimant's chronic pain lasting years, the failure of nonoperative treatment to provide relief, and the positive response on both the right and left to a bilateral sacroiliac injection are consistent with the indications set forth in the ODG for sacroiliac joint fusion as a last resort for Claimant's severe sacroiliac joint pain.
5. A left-sided sacroiliac joint fusion with a 3-day hospital stay is reasonably required medical treatment 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 IRO that a left-sided sacroiliac joint fusion with a 3-day hospital stay is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to a left-sided sacroiliac joint fusion with a 3-day hospital stay for the compensable injury of (Date of Injury).

ORDER

Carrier is liable for the benefits at issue in this hearing.

The true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DIANE MORRIS, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78766**

Signed this 1st day of May, 2013.

KENNETH A. HUCTION
Hearing Officer