

Texas Department of Insurance

MEDICAL CONTESTED CASE HEARING NO 23008

Decision

For the reasons discussed below, the administrative law judge decides:

For the compensable injury of (Date of Injury), the claimant is not entitled to a bilateral L3-L4 and L4-L5 deuk laser disc repair under monitored anesthesia care.

Statement of the Case

The claimant appealed the decision of the Independent Review Organization in Case Number 353859. Judge Jacquelyn Coleman held a hearing for this appeal on June 1, 2023, to decide the following:

For the compensable injury of (Date of Injury), is the claimant entitled to a bilateral L3-L4 and L4-L5 deuk laser disc repair under monitored anesthesia care?

Persons Present

The claimant appeared and was assisted by LM, ombudsman.

The insurance carrier appeared and was represented by ST, 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-6

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

The claimant affirmed there were 38 pages of Claimant's Exhibits. The insurance carrier affirmed there were 24 pages of Insurance Carrier's Exhibits.

Discussion

The claimant, a master welder, was injured at work on (Date of Injury), when he was crawling on his belly underneath a pipe with a one-foot clearance. The claimant reached up and to the right to get from underneath the pipe and, as he twisted, turned, and pulled himself up he felt a severe pain in his lower back. The claimant received physical therapy, pain medications, and injections for his lower back injury. The claimant testified, and the documentary evidence indicated, that he underwent five lumbar spine surgeries with the most recent surgery being the removal of the hardware.

Dr. AD, a neurosurgeon in (state), recommended a deuk laser disc repair, which is referred to as a percutaneous endoscopic laser discectomy (PELD) in the *Official Disability Guidelines* (ODG). Preauthorization from the insurance carrier's utilization review agent was requested and denied twice. The treatment was denied because evidence-based medical evidence did not establish that there were any benefits from the procedure. Therefore, it is not recommended by the ODG.

The claimant then requested an Independent Review Organization review of the denials. In the decision letter dated February 9, 2023, the Independent Review Organization agreed with the insurance carrier's denials. The claimant is now appealing the Independent Review Organization decision.

In this dispute, the claimant has the burden of showing by a preponderance of the medical evidence that the Independent Review Organization decision is wrong. The claimant relied upon his testimony, the medical records, and the opinion of Dr. D to support his position of entitlement to the disputed treatment.

The insurance carrier relied on the medical records, the opinions of the utilization review agents and Independent Review Organization, and the ODG to support its position that the claimant is not entitled to the requested treatment.

The claimant testified that he would like to receive the requested treatment because he believed that the treatment would finally alleviate his pain. The claimant testified that he believed that the procedure would give him 100% relief from his back pain as well as the

pain in his bilateral legs, feet, and ankles. The claimant testified that he believed that, after he had the procedure, he would be able to return to work performing his pre-injury job duties as a welder.

Dr. D provided an office visit note from his telemedicine consultation with the claimant dated October 18, 2022. Dr. D discussed the claimant's medical history. He explained why he believed that the deuk laser disc repair was an effective treatment for disc herniations, annular tears, discogenic back pain, radiculopathy, and stenosis. Dr. D stated that the claimant would require a bilateral L3-L4 and L4-L5 deuk laser disc repair. Dr. D discussed the general effectiveness of the procedure. However, he did not persuasively explain, nor did he specifically explain how the recommended procedure would help the claimant. Dr. D stated that the procedure is FDA approved and it uses FDA approved medications and equipment. However, he did not cite any medical journal articles or any other evidence-based medicine to support his opinion.

The claimant's testimony was credible. However, this is not a case dependent on the claimant's credibility. This is a case dependent upon the expert medical evidence. The opinion of Dr. D was considered. However, he did not provide a persuasive explanation using evidence-based medicine of how the disputed treatment was necessary.

The ODG does not support the necessity of the disputed treatment. Therefore, the preponderance of the evidence is not contrary to the decision of the Independent Review Organization that the claimant is not entitled to a bilateral L3-L4 and L4-L5 deuk laser disc repair under monitored anesthesia care.

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

with Zurich American Insurance Company.

- D. On (Date of Injury), the claimant sustained a compensable injury.
 - E. The Independent Review Organization determined that the claimant should not have a bilateral L3-L4 and L4-L5 deuk laser disc repair under monitored anesthesia care.
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 preponderance of the evidence-based medical evidence is not contrary to the decision of the Independent Review Organization that the claimant is not entitled to a bilateral L3-L4 and L4-L5 deuk laser disc repair under monitored anesthesia care 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. The claimant is not entitled to a bilateral L3-L4 and L4-L5 deuk laser disc repair under monitored anesthesia care for the compensable injury of (Date of Injury).

Order

The insurance carrier is not liable for the benefits at issue in this decision. The claimant remains entitled to medical benefits for the compensable injury.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY**. 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 June 12, 2023.

Jacquelyn Coleman
Administrative Law Judge