

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.

ISSUE

A contested case hearing was opened on October 18, 2007, and closed on January 11, 2008, to decide the following disputed issue:

1. Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization that left shoulder arthroscopy, subacromial decompression, coracoacromial ligament release, distal clavicle excision and evaluation of the rotator cuff are not reasonable and necessary health care services for the compensable injury of ___?

PARTIES PRESENT

Claimant appeared and was assisted by an (Ombudsman). Carrier appeared and was represented by an (Attorney).

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his neck, left shoulder and low back in a motor vehicle accident on ____. Dr. F performed left shoulder surgery on March 31, 2006, with little, if any, success. Claimant subsequently changed treating doctors to Dr. K who referred him to Dr. M for surgical evaluation. Dr. M has recommended the surgery described in the issue above.

In upholding the previous adverse determinations denying the surgery, the Independent Review Organization (IRO) stated:

- a. Claimant had a moderate strain/tendonitis in the periphery of the supraspinatus tendon;
- b. Claimant had subtle fraying and irregularity of the superficial anterior peripheral tendon fibers;
- c. There was no full thickness tear or retraction;
- d. Claimant had normal range of motion and a normal x-ray; and
- e. Most of Claimant's pain was alleviated on July 16, 2007, by an acromio-clavicular joint injection administered by Dr. M.

The IRO also noted:

- a. No operative report was provided for the surgery on March 31, 2006;
- b. No specific information on the surgical procedure or intraoperative findings was provided;

- c. No clinical information was provided for the postoperative course;
- d. No further records were provided other than a left shoulder MRI in May 2007 which followed electrodiagnostic studies in October 2006 documenting radiculopathy;
- e. No physician notes were provided from Dr. M's evaluation in July 2007; and
- f. There was generally insufficient information provided to make a determination of the necessity for surgery.

Under the Official Disability Guidelines (ODG) in reference to Shoulder, Surgery for Impingement Syndrome, the recommendation is:

"Recommended as indicated below. Surgery for impingement syndrome is usually arthroscopic decompression (acromioplasty). However, this procedure is not indicated for patients with mild symptoms or those who have no limitations of activities. Conservative care, including cortisone injections, should be carried out for at least three to six months prior to considering surgery. Since this diagnosis is on a continuum with other rotator cuff conditions, including rotator cuff syndrome and rotator cuff tendonitis, see also Surgery for rotator cuff repair. (Prochazka, 2001) (Ejnisman-Cochrane, 2004) (Grant, 2004) Arthroscopic subacromial decompression does not appear to change the functional outcome after arthroscopic repair of the rotator cuff. (Gartsman, 2004) This systematic review comparing arthroscopic versus open acromioplasty, using data from four Level I and one Level II randomized controlled trials, could not find appreciable differences between arthroscopic and open surgery, in all measures, including pain, UCLA shoulder scores, range of motion, strength, the time required to perform surgery, and return to work. (Barfield, 2007) Operative treatment, including acromioplasty with decompression and rotator cuff repair, may be considered in the treatment of patients whose condition does not improve after 6 months of conservative therapy or of patients younger than 60 years with debilitating symptoms that impair function. The results of conservative treatment vary, ongoing or worsening symptoms being reported by 30-40% patients at follow-up. Patients with more severe symptoms, longer duration of symptoms, and a hook-shaped acromion tend to have worse results than do other patients. (Hambly, 2007)

"ODG Indications for Surgery -- Acromioplasty:

Criteria for anterior acromioplasty with diagnosis of acromial impingement syndrome (80% of these patients will get better without surgery.)

1. Conservative Care: Recommend 3 to 6 months: Three months is adequate if treatment has been continuous, six months if treatment has been intermittent. Treatment must be directed toward gaining full ROM, which requires both stretching and strengthening to balance the musculature. PLUS
2. Subjective Clinical Findings: Pain with active arc motion 90 to 130 degrees. AND Pain at night (Tenderness over the greater tuberosity is common in acute cases.) PLUS
3. Objective Clinical Findings: Weak or absent abduction; may also demonstrate atrophy. AND Tenderness over rotator cuff or anterior acromial area. AND Positive impingement sign and temporary relief of pain with anesthetic injection (diagnostic injection test). PLUS
4. Imaging Clinical Findings: Conventional x-rays, AP, and true lateral or axillary [sic] view. AND Gadolinium MRI, ultrasound, or arthrogram shows positive evidence of deficit in rotator cuff.(Washington, 2002)"

The IRO was provided vastly inadequate records when, in fact, Claimant could possibly have met the criteria of the ODG if Carrier had provided Claimant's Exhibit Nos. 3 through 10 comprising approximately 48 pages to the IRO. The excerpts provided to the IRO give a wholly incorrect representation of Claimant's history and condition at the time of the request for the surgical intervention at issue herein. Nevertheless, Claimant failed to present evidence-based written or testimonial medical evidence as to the appropriateness of the proposed procedure or proper findings based on complete records. Therefore, the decision of the IRO can not be overturned.

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 ____, Claimant was the employee of (Employer), when he sustained a compensable injury.
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 preponderance of the evidence is not contrary to the decision of the Independent Review Organization that left shoulder arthroscopy, subacromial decompression, coracoacromial ligament release, distal clavicle excision and evaluation of the rotator cuff are not reasonable and necessary health care services for the compensable injury of ____.

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. Left shoulder arthroscopy, subacromial decompression, coracoacromial ligament release, distal clavicle excision and evaluation of the rotator cuff are not reasonable and necessary health care services for the compensable injury of ____.

DECISION

Left shoulder arthroscopy, subacromial decompression, coracoacromial ligament release, distal clavicle excision and evaluation of the rotator cuff are not reasonable and necessary health care services for the compensable injury of ____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

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

**CORPORATION SERVICE COMPANY dba
CSC-LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 17th day of January, 2008.

Charles T. Cole
Hearing Officer