

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 benefit contested case hearing was held on March 31, 2008, to decide the following disputed issue:

Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that left shoulder MRI is not a reasonable and necessary treatment for the compensable injury of ___?

PERSONS PRESENT

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

BACKGROUND INFORMATION

Claimant is a (self-insured) police officer. He sustained injuries on ___ when he was descended a wall in pursuit of a suspect. The medical records indicate that he sustained injuries to his left knee and left shoulder.

Claimant had a MRI of his left shoulder on February 15, 2007 which revealed full thickness tears of the supraspinatus and infraspinatus. Another MRI was performed on July 8, 2007 which again revealed a full thickness tear of the supraspinatus tendon. Claimant underwent surgery to repair his left rotator cuff on August 3, 2007 and thereafter underwent postoperative physical therapy.

Claimant's surgeon, Dr. J, noted his progress after surgery. The records reveal that his shoulder consistently improved after surgery and throughout physical therapy until November 9, 2007 when he reported some sharp pain in his left shoulder. The December 6, 2007 follow up note revealed that the Claimant had some weakness in his left shoulder, a mildly limited range of motion, and some tenderness over the left rotator cuff. On this date, Dr. N ordered a repeat MRI to determine if Claimant had a recurrent tear in his left shoulder.

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. **Section 401.011(22-a)** defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by **Section 401.011(18-a)** as 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 Division of Workers' Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

Accordingly, in a medical necessity dispute, the first issue is whether the proposed care is consistent with the *ODG*. The preauthorization and reconsideration denials cited the *ODG* for the proposition that use of an MRI of the shoulder is supported before injection to both confirm the diagnosis and to triage affected patients to those likely to benefit (those without a cuff tear) and those not likely to benefit (those with a tear). The IRO reviewer, a board certified orthopaedic surgeon, upheld the denial and opined that the left shoulder MRI was not medically necessary citing the prior two pre-surgery MRI's. He further noted that there was no clinical basis for the MRI and that in accordance with the *ODG*, MRI is a scanning tool to be used as a treatment guideline.

As noted previously, Dr. J requested the MRI to rule out a repeat tear. Dr. N records do not substantiate his request in the context of the *ODG* and he did not provide a report addressing the *ODG* criteria and explaining how or why Claimant meets the criteria for a left shoulder MRI.

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert's bald assurance of validity is not enough. See *Black v. 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). When determining reliability, the hearing officer must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990) *affd*, 824 S.W.2d 568, 574 (Tex. Crim. App. 1992).

In the case at hand, the Claimant failed to meet his burden of proof. While he presented evidence of the request by his doctor and some rationale for it, Claimant did not present evidence-based medical evidence as to the appropriateness of the proposed procedure, he did not establish that no such evidence-based medical evidence is available, and he failed to present evidence that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. Dr. N's request and limited information from his reports, without reference to the *ODG* or other evidence-based medicine justifying departure from the *ODG*, does not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested left shoulder MRI for this injured worker does not meet the criteria set out in the *ODG*.

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.
 - C. The IRO determined that the requested left shoulder MRI was not reasonable and necessary health care for the compensable injury of __.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The treating doctor requested a left shoulder MRI scan.
4. Claimant had two left shoulder MRI's prior to surgery.
5. The requested service is not consistent with the *ODG* criteria for a shoulder MRI.
6. A left shoulder MRI is not a reasonable and necessary health care service 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 was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of IRO that a left shoulder MRI is not a reasonable and necessary health care service for the compensable injury of ____.

DECISION

The preponderance of the evidence is not contrary to the decision of IRO that a left shoulder MRI is not a reasonable and necessary health care service 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 Section 408.021.

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

**MAYOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 9th day of April, 2008.

Deeia Beck
Hearing Officer