

**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 scheduled for April 16, 2008 but reset to and held on June 25, 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 a left shoulder arthroscopy and rotator cuff repair are not reasonable and necessary health care services for the compensable injury of \_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by MH, ombudsman. Carrier appeared and was represented by RMJ, attorney.

**BACKGROUND INFORMATION**

On \_\_\_, Claimant sustained a compensable injury to his left shoulder and right ankle when he fell off of a loading dock. Claimant testified that he underwent physical therapy which helped his ankle but not his shoulder. Claimant testified that he has also treated with pain medications and he had one injection but that did not alleviate his pain in his left shoulder. The Claimant underwent an MRI of the left shoulder on June 18, 2007 which revealed a large rotator cuff tear with retraction. Claimant's treating doctor, Dr. S, has recommended a left shoulder arthroscopy and rotator cuff repair which has been denied by the Carrier.

The IRO reviewer, a board certified orthopedic surgeon, recommended that the left shoulder arthroscopy and rotator cuff repair not be authorized. The IRO reviewer's rationale was that the Claimant has a chronic rotator cuff tear and rotator cuff arthropathy. The IRO reviewer concluded that a rotator cuff repair is not indicated for this disease state and that there were other options for the Claimant.

Under the Official Disability Guidelines (ODG), in reference to surgery for rotator cuff repair, the recommendation is:

Repair of the rotator cuff is indicated for significant tears that impair activities by causing weakness of arm elevation or rotation, particularly acutely in younger workers. However, rotator cuff tears are frequently partial-thickness or smaller full-thickness tears. For partial-thickness rotator cuff tears and small full-thickness tears presenting primarily as impingement, surgery is reserved for cases failing conservative therapy for three months. The preferred procedure is usually arthroscopic decompression, but the outcomes from open repair are as good or better. Surgery is not indicated for patients with mild symptoms or

those who have no limitations of activities. (Ejnisman-Cochrane, 2004) (Grant, 2004) Lesions of the rotator cuff are best thought of as a continuum, from mild inflammation and degeneration to full avulsions. Studies of normal subjects document the universal presence of degenerative changes and conditions, including full avulsions without symptoms. Conservative treatment has results similar to surgical treatment but without surgical risks. Studies evaluating results of conservative treatment of full-thickness rotator cuff tears have shown an 82-86% success rate for patients presenting within three months of injury. The efficacy of arthroscopic decompression for full-thickness tears depends on the size of the tear; one study reported satisfactory results in 90% of patients with small tears. A prior study by the same group reported satisfactory results in 86% of patients who underwent open repair for larger tears. Surgical outcomes are much better in younger patients with a rotator cuff tear, than in older patients, who may be suffering from degenerative changes in the rotator cuff. Referral for surgical consultation may be indicated for patients who have: Activity limitation for more than three months, plus existence of a surgical lesion; Failure of exercise programs to increase range of motion and strength of the musculature around the shoulder, plus existence of a surgical lesion; Clear clinical and imaging evidence of a lesion that has been shown to benefit, in both the short and long term, from surgical repair; Red flag conditions (e.g., acute rotator cuff tear in a young worker, glenohumeral joint dislocation, etc.). Suspected acute tears of the rotator cuff in young workers may be surgically repaired acutely to restore function; in older workers, these tears are typically treated conservatively at first. Partial-thickness tears are treated the same as impingement syndrome regardless of MRI findings. Outpatient rotator cuff repair is a well accepted and cost effective procedure. (Cordasco, 2000) Difference between surgery & exercise was not significant. (Brox, 1999) There is significant variation in surgical decision-making and a lack of clinical agreement among orthopedic surgeons about rotator cuff surgery. (Dunn, 2005)

*Revision rotator cuff repair:* The results of revision rotator cuff repair are inferior to those of primary repair. While pain relief may be achieved in most patients, selection criteria should include patients with an intact deltoid origin, good-quality rotator cuff tissue, preoperative elevation above the horizontal, and only one prior procedure. (Djurasovic, 2001)

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 *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. The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*.

The Claimant offered DWC-73's and a statement from Dr. S that the Claimant has pain and limited range of motion to the left shoulder without response to conservative measures including physical therapy and left shoulder injections. Dr. S opined that the Claimant might benefit from the rotator cuff surgery. Dr. S failed to address the *ODG* or explain why the proposed surgery would be appropriate considering evidence based medicine. Based on the evidence presented, the Claimant failed to provide evidence based medicine sufficient to contradict the determination of the IRO and the greater weight of the credible evidence is not contrary to the decision of the IRO.

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 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 the Claimant undergo a left shoulder arthroscopy and rotator cuff repair to treat the compensable injury of \_\_\_\_.
4. The requested service is not consistent with the *ODG* criteria for chronic rotator cuff tear and rotator cuff arthropathy.
5. The Claimant failed to provide evidence based medicine contrary to the IRO's determination that a left shoulder arthroscopy and rotator cuff repair 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 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 arthroscopy and rotator cuff repair are not reasonable and necessary health care services for the compensable injury of \_\_\_\_

## DECISION

The preponderance of the evidence is not contrary to the decision of IRO that a left shoulder arthroscopy and rotator cuff repair are not reasonable and necessary health care services for the compensable injury of \_\_\_\_.

## ORDER

The 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 Section 408.021.

The true corporate name of the insurance carrier is the **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TX 78701**

Signed this 25th day of June, 2008.

Carol A. Fougerat  
Hearing Officer