

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 July 10, 2008, to decide the following disputed issue:

1. Is the requested subacromial decompression and resection of the distal clavicle of the left shoulder reasonably necessary health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Subclaimant did not appear. Claimant appeared and was assisted by MF, ombudsman. Respondent/Carrier appeared and was represented by RL, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable left shoulder injury when the SkyTrak forklift he was operating for the employer, overturned on uneven ground. An MRI taken on September 25, 2007, revealed a bone contusion involving the distal aspect of the left clavicle and left acromion. One of Claimant's doctors, Dr. DB, M.D. of the (Health Care Provider 1) of (City 1), (State 1), recommended that Claimant undergo a subacromial decompression and resection of the distal clavicle of the left shoulder. Carrier refused to preauthorize the requested procedure. The request was refused a second time and the refusal was appealed to the Texas Department of Insurance (TDI). TDI appointed (Company) to act as the Independent Review Organization (IRO) in this matter. On January 22, 2008, the IRO issued its decision, upholding Carrier's denial of the decompression and resection surgery. The physician reviewer for the IRO stated that his determination was based on his medical judgment and the ODG Guidelines. He recommended that Claimant have further non-operative treatment. He stated that he had reviewed medical records indicating that Claimant had full range of motion, a lack of documented supervised physical therapy, a lack of documented painful arc syndrome, impingement, or any other objective criteria of acromioclavicular disease.

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 (Texas Labor Code §408.021). "Health care reasonably required" is defined 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, generally accepted standards of medical practice recognized in the medical community (Texas Labor Code §401.011(22-a)). "Evidence based medicine" means 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 (Texas Labor Code §401.011 (18-a)). In accordance with the above statutory

guidance, Rule 137.100 directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be reasonably required. The ODG addresses surgery for impingement syndrome as follows:

Surgery for impingement syndrome

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 view. AND Gadolinium MRI, ultrasound, or arthrogram shows positive evidence of deficit in rotator cuff.

(Washington, 2002)

Claimant had undergone less than six months of conservative care as of the date of the IRO decision. Although Claimant testified that he had received some physical therapy prescribed by GN, PA-C of (Health Care Provider 2), the medical records fail to show that there were three months of continuous treatment aimed at gaining full range of motion. A progress report from Mr. N indicates that the physical therapy was not prescribed until October 1, 2007. Mr. N's records do, however, indicate that Claimant had full active range of motion with minimal tenderness to the AC joint during a visit on September 25, 2007. During the time Claimant treated with Dr. B, an injection was performed, but Claimant testified that there was no improvement after the injection. Additionally, the MRI done on September 25, 2007, revealed no intrinsic abnormalities of the rotator cuff. In light of the lack of evidence of three to six months of conservative care, the negative diagnostic injection results, and the lack of evidence of a deficit in the rotator cuff, Claimant has failed to show by a preponderance of the evidence that the IRO decision did not conform to the ODG.

Although Dr. B appealed the IRO findings, he neither appeared and presented evidence nor did he provide an expert report to show that the requested procedure conformed to the ODG or that the findings of the IRO were inconsistent with evidence based medicine. Without expert evidence to refute the IRO report, Claimant has failed to meet his burden to show that the IRO report is contrary to the preponderance of the evidence and the presumptive weight of the IRO report will stand.

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 2) Satellite Office of the (City 3) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. Claimant sustained a compensable injury on _____, while the employee of the employer.
 - C. The Texas Department of Insurance assigned the review of Carrier's denial of preauthorization for the requested procedure to (Company).
 - D. (Company) upheld Carrier's denial of the requested procedure.
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. As of the date of the IRO review of the medical necessity of the requested procedure, Claimant had not undergone three months of continuous conservative care, or six months of intermittent conservative care, directed at restoring full active range of motion of the left shoulder.

4. As of the date of the IRO review of the medical necessity of the requested procedure, Claimant's medical records indicated he had full active range of motion of the left shoulder in late September of 2005 and there was no evidence of intrinsic abnormalities of the rotator cuff.
5. Claimant testified that he had received no relief from an injection to the left shoulder.
6. The preponderance of the evidence is not contrary to the IRO determination that the requested subacromial decompression and resection of the distal clavicle of the left shoulder is not reasonably required health care 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 2) Satellite Office of the (City 3) Field Office.
3. The requested subacromial decompression and resection of the distal clavicle of the left shoulder is not reasonably required health care for the compensable injury of _____.

DECISION

The requested subacromial decompression and resection of the distal clavicle of the left shoulder is not reasonably required health care 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 **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.**

Signed this 14th day of July, 2008.

KENNETH A. HUCTION
Hearing Officer