

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 August 6, 2008, to decide the following disputed issue:

Is left shoulder EUA, DX arthroscopy with debridement health care reasonably required in accordance with Texas Labor Code, Section 408.021?

PARTIES PRESENT

Claimant appeared and was assisted by MV, Ombudsman.

Carrier appeared and was represented by DP, Attorney.

BACKGROUND INFORMATION

Claimant injured his left shoulder in a trip and fall incident on _____.

Dr. H noted that Claimant had failed conservative care and he performed surgery on his left shoulder on September 13, 2005. The procedure was an arthroscopy of the left shoulder with acromioplasty. The operative report noted that the bicep tendon was within normal limits and the rotator cuff tendons were all intact.

Claimant apparently failed to improve after the first surgery and was taken to surgery a second time by Dr. Z on August 28, 2006. This procedure was listed as an examination under anesthesia with diagnostic arthroscopy with debridement. Arthroscopic findings noted inflammation in the rotator cuff but no tears.

Claimant was evaluated by Dr. Z in August 2007. The report noted that Claimant had completed rehabilitation three months ago and still was experiencing left shoulder pain. A MRI of the left shoulder was ordered.

The MRI findings of the left shoulder were read to show a small tear of the supraspinatus and a small tear of the subscapularis. Dr. Z evaluated Claimant on October 9, 2007. She read the MRI findings to be consistent with recurrent rotator cuff tear. This seems inconsistent with Dr. Z's arthroscopic findings in August 2006 that the rotator cuff was intact with no tears. Dr. Z recommended a third surgery.

Dr. Z requested pre-authorization for left shoulder examination under anesthesia and diagnostic arthroscopy with debridement. The Carrier denied the request for the third surgical procedure and the Claimant has appealed the Carrier denial to the Division's Medical Dispute Resolution Section for decision by the Independent Review Organization (IRO).

The IRO issued a decision upholding the Carrier's denial of the requested medical treatment Claimant has requested this Medical Contested Case Hearing (MCCH) to review the IRO decision.

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be 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 accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule 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 health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the Official Disability Guidelines (ODG).

The ODG indications for surgical repair of the rotator cuff are as follows:

Criteria for rotator cuff repair OR anterior acromioplasty with diagnosis of partial thickness rotator cuff repair OR 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)

The ODG indications for revision rotator cuff repair are as follows:

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)

The IRO decision relies on the ODG and peer reviewed nationally accepted medical literature to uphold the Carrier's denial left shoulder repair surgery. The medical literature relied on is an article in the Journal of the American Academy of Orthopaedic Surgeons entitled "*Partial Thickness Rotator Cuff Tears*" dated December 2006. The IRO decision is based on evidence based medicine.

In contrast, the requesting surgeon has not addressed any evidence based medicine in either her request for left shoulder repair surgery or her follow up attempt to justify her request. The record was left open for the Claimant to obtain a report that addressed the IRO decision in terms of evidence based medicine. In response, Dr. Z provided the following justification dated August 13, 2008 for her request for left shoulder surgery:

"(Claimant) has persistent recurrent pain and weakness from his left shoulder post injury and surgery due to scar tissue and rotator cuff tear. We have maximized non-operative measures to include medication, rehab exercises and activity modification. Patient is still quite limited in terms of daily activities from left shoulder pain.

I feel that repeat surgery to include arthroscopy and mini-open rotator cuff repair is warranted to help with his symptoms and function regarding the left shoulder."

As can be seen from Dr. Z's response, she made no attempt to justify her request using the ODG or any other evidence based medicine. Everything stated in her report may be correct, but it ignores the statutory mandate that health care under the Texas Workers' Compensation Act must be provided in accordance with best practices consistent with evidence based medicine. Health care must be justified by the use of the current best qualified 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.

The treating surgeon's request for approval of left shoulder repair surgery does not meet the statutory requirement. The medical evidence is not contrary to the IRO decision that the Carrier's denial of left shoulder surgery is upheld.

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).
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. Claimant sustained a compensable left shoulder injury on _____.
4. Claimant had left shoulder repair surgery in September 2005 and again in August 2006.
5. The preponderance of the evidence is not contrary to the IRO decision that left shoulder EUA, DX arthroscopy with debridement is not health care reasonably required.

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 EUA, DX arthroscopy with debridement is not health care reasonably required in accordance with Texas Labor Code, Section 408.021.

DECISION

Left shoulder EUA, DX arthroscopy with debridement is not health care reasonably required in accordance with Texas Labor Code, Section 408.021.

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 **TEXAS MUTUAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**RUSSELL OLIVER, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 3rd day of September, 2008.

Donald E. Woods
Hearing Officer