

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 October 21, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a right shoulder arthroscopy with debridement for the compensable injury of _____?

Claimant's surgeon asked to present peer-reviewed studies after his testimony. The record was kept open for him to provide those. He presented over 77 pages of peer-reviewed medical literature to support his positions. Each party was given time to review the new material. Each party stated they reviewed the literature and had no further comments. The record was then closed on November 13, 2009.

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by JC, attorney. Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable shoulder injury and had surgery on February 06, 2007. On February 12, 2009, Dr. M, M.D., Claimant's surgeon, determined Claimant needed a second surgery and requested right shoulder arthroscopy (CPT code 29805) and debridement (CPT code 29823). These are the procedures noted in the description of the service or services in dispute on the IRO review outcome. There are approximately 250 pages in evidence including but not limited to examinations and SOAP notes from the surgeon dated October 17, 2008, through June 12, 2009; physical therapy records and FCEs from March 26, 2007, through June 10, 2009; diagnostic imaging studies, and injection records.

The IRO doctor noted the request is for a diagnostic arthroscopy with debridement. He documented he relied upon adverse determination letters, peer review reports, medical reports from three dates of exams with Dr. M, an MRI report dated January 25, 2008, an arthrogram dated November 06, 2007, an unidentified "H&P" dated November 27, 2006, and rehab progress notes from (Healthcare Provider) dated November 29, 2006 through April 10, 2007 -- approximately 15-20 pages of medical records. Additionally, the rehab records would be pre- and post therapy records from the first surgery and not related to any treatment or testing since that time. It is clear the IRO doctor did not have the benefit all of the medical records. The IRO doctor agreed with the opinions of the previous reviewers noting inadequate conservative care. He states, "The medical records do not contain any notation from the treating surgeon as to why the recommended conservative nonoperative modalities have not been implemented and why the

statutorily mandated ODG Guidelines (sic) should be set aside in this particular individual's case."

The procedure Dr. M described would fall under diagnostic arthroscopy. He testified once he goes into the shoulder, he will discover what is wrong and will know what to fix but he won't have a clear picture of that until he scopes the shoulder. He testified how CPT codes can be encompassing so the CPT code for debridement will encompass the surgical procedure for arthroscopy. He knows once he goes in, he may end up doing procedures he did not request and the carrier will not pay for, but that is better than going into the shoulder twice. Dr. M and Claimant testified Claimant has had all of the Official Disability Guidelines recommended conservative care including physical therapy, work hardening, work conditioning/pain management, injections, steroidal infiltration, and rhizotomies. Dr. M testified to the extent of Claimant's subjective and objective clinical findings and inconclusive diagnostic testing and that Claimant is still in pain, still lacks function and needs the surgery requested.

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 commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, and outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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, 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.

Under the Official Disability Guidelines in reference to a diagnostic arthroscopy, the following recommendation is made:

Recommended as indicated below. **Criteria** for diagnostic arthroscopy (shoulder arthroscopy for diagnostic purposes): Most orthopedic surgeons can generally determine the diagnosis through examination and imaging studies alone. Diagnostic arthroscopy should be limited to cases where imaging is inconclusive and acute pain or functional limitation continues despite conservative care. Shoulder arthroscopy should be performed in the outpatient setting. If a rotator cuff tear is shown to be present following a diagnostic arthroscopy, follow the

guidelines for either a full or partial thickness rotator cuff tear. (Washington, 2002) (de Jager, 2004) (Kaplan, 2004)

In this case, Dr. M testified and explained the imaging studies Claimant underwent and how they were inconclusive. He testified specifically there is peer-reviewed literature regarding patients who have had previous surgery (such as this Claimant) often have inconclusive imaging studies. The record was left open for Dr. M to provide those studies to the parties and the hearing officer. The studies he provided support his testimony that imaging studies often miss musculoskeletal problems and how diagnostic imaging done on patients who already had surgery is often inconclusive and/or misses pathologies later found during a surgery. The medical records and testimonies of Dr. M and Claimant support Claimant is undergoing acute pain and that functional limitation continues despite conservative care. The IRO report clearly indicates the IRO doctor did not have the aid of all the medical records to inform him conservative treatment has been exhaustive and of little or no help. Claimant provided evidence-based medicine literature, records and testimony sufficient to contradict the determination of the IRO opinion and the preponderance of the credible evidence is 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).
 - C. On _____, Claimant sustained a compensable injury.
 - D. The Independent Review Organization determined Claimant should not have a right shoulder arthroscopy with debridement.
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. A right shoulder arthroscopy with debridement is health care reasonably required 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. The preponderance of the evidence is contrary to the decision of the IRO that a right shoulder arthroscopy with debridement is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is entitled to a right shoulder arthroscopy with debridement for the compensable injury of _____.

ORDER

Carrier is 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 **LIBERTY MUTUAL 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, TX 78701-3232.**

Signed this 16th day of November, 2009.

KEN WROBEL
Hearing Officer