

**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 7, 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 manipulation under anesthesia and injection of the left shoulder?

**PARTIES PRESENT**

Claimant appeared and was assisted by SC, ombudsman. Petitioner/Provider, KB, appeared by telephone as a witness in this matter. Carrier appeared by phone and was represented by JS, attorney.

**BACKGROUND INFORMATION**

Claimant sustained compensable injuries to his left shoulder on \_\_\_\_\_. Claimant underwent a left shoulder rotator cuff repair on November 19, 2008. Subsequent to the surgery, his complaints of shoulder pain increased. Claimant underwent conservative treatment for his shoulder including physical therapy. Based on his physical examination and complaints, Dr. B recommended manipulation under anesthesia and injection of the left shoulder.

After Dr. B requested pre-authorization for the surgical procedure, utilization reviews were conducted. Both utilization reviews denied the request because examination showed that the claimant has a functional range of motion with forward flexion of 160 degrees, abduction of 150 degrees, and external rotation of 80 degrees. Further it stated that the request for manipulation under anesthesia is not medically necessary and current ODG Guidelines do not recommend manipulation under anesthesia unless the patient has significantly restricted range of motion of less than 90 degrees on abduction. Manipulation under anesthesia is indicated in patients whose range of motion remains significantly restricted with abduction less than 90 degrees despite conservative therapy. Dr. B appealed the carrier's decision to an IRO. The IRO upheld the carrier's denial and provided the same reason, no objective evidence of abduction less than 90 degrees. Dr. B appealed the decision of the IRO to a Medical Contested Case Hearing. Dr. B testified that the claimant's abduction was as indicated above and was not less than 90 degrees.

**DISCUSSION**

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 ODG. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

In the present case, the ODG does address the proposed manipulation under anesthesia. To overcome the decision of the IRO, the claimant presented the expert testimony of his orthopedic surgeon, Dr. B. Dr. B stated that he relied upon the ODG. The ODG Shoulder Chapter states:

Manipulation under anesthesia (MUA) is under study as an option in adhesive capsulitis. In cases that are refractory to conservative therapy lasting at least 3-6 months where range of motion remains significantly restricted (abduction less than 90 degrees), manipulation under anesthesia may be considered. There is some support for manipulation under anesthesia in adhesive capsulitis, based on consistent positive results from multiple studies, although these studies are not high quality. (Colorado, 1998) (Kivimaki, 2001) (Hamdan, 2003)

Dr. B further testified that he believed the claimant was a good candidate for manipulation under anesthesia because the claimant was unable to move his shoulder and had chronic tendonitis. Dr. B testified that the complained of symptoms are all clinical signs of this condition and that stretching out the joint and breaking up scar tissue by manipulation under anesthesia would help the claimant. However, Dr. B testified that the claimant did not have abduction less than 90 degrees.

The claimant has not shown by a preponderance of evidence-based medicine that the requested manipulation under anesthesia with injection is health care reasonably required for the compensable injury.

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. Claimant sustained a compensable injury on \_\_\_\_\_.
  - D. The IRO determined that the Claimant should not have the manipulation under anesthesia.
- 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. Manipulation under anesthesia with injection is not 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 not contrary to the decision of the IRO that manipulation under anesthesia is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to manipulation under anesthesia and injection 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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**ROBIN M. MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, #300  
IRVING, TX 75063**

Signed this 7th day of October, 2009.

Susan Meek  
Hearing Officer