MEDICAL CONTESTED CASE HEARING NO. 10107
M6-10-22431-01

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 December 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 entitled to repeat right shoulder arthroscopy with rotator cuff repair for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by NO, ombudsman. Carrier appeared and was represented by RS, attorney.

BACKGROUND INFORMATION

The claimant, now 45, works on an oil rig as a rope technician. He sustained a compensable injury on _____ when a co-worker slammed a truck door on his right shoulder. X-rays and an MR arthrogram on December 21, 2007 indicated arthrosis of the right AC joint and a partial right rotator cuff tear. Dr. M performed a right shoulder arthroscopy with a distal clavical resection and debridement of a partial rotator cuff tear on July 10, 2008. He followed up with the claimant periodically thereafter and prescribed a conservative treatment regimen of physical therapy, but the claimant continued to experience pain in his right shoulder. An MR arthrogram of the right shoulder on July 20, 2009 indicated an articular surface tear and a small linear intrasubstance tear of the distal supraspinatus tendon. Dr. M then recommended re-arthroscopy and right rotator cuff repair.

On September 25, 2009, an IRO reviewer, a board certified orthopedic surgeon, overturned the previous adverse determinations, writing that the claimant has a partial rotator cuff tear from the original injury that was treated with arthroscopic debridement, but that procedure is sometimes inadequate. The reviewer asserts that a repeat arthroscopy and rotator cuff repair should be performed. Because the claimant had already undergone an unsuccessful right shoulder arthroscopy, the IRO reviewer explains that "the ODG guidelines do not specifically address this" (ie. re-arthroscopy). In determining that the claimant was entitled to a repeat right shoulder arthroscopy with rotator cuff repair, the reviewer relies upon clinical experience, medical judgment, expertise in accordance with accepted medical standards, and the standard of care within the orthopedic surgery community.

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. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, 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 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 are 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."

The ODG provides the following for rotator cuff repair:

> Recommended as indicated below. 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 orthopaedic surgeons about rotator cuff surgery. (Dunn, 2005) For rotator cuff pain with an intact tendon, a trial of 3 to 6 months of conservative therapy is reasonable before orthopaedic referral. Patients with small tears of the rotator cuff may be referred to an orthopaedist after 6 to 12 weeks of conservative treatment. (Burbank2, 2008) Patients with workers' compensation claims have worse outcomes after rotator cuff repair. (Henn, 2008)

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)

ODG Indications for Surgery™ -- Rotator cuff repair:

Criteria for rotator cuff repair with diagnosis of full thickness rotator cuff tear AND Cervical pathology and frozen shoulder syndrome have been ruled out:

1. Subjective Clinical Findings: Shoulder pain and inability to elevate the arm; tenderness over the greater tuberosity is common in acute cases. PLUS

2. Objective Clinical Findings: Patient may have weakness with abduction testing. May also demonstrate atrophy of shoulder musculature. Usually has full passive range of motion. PLUS

3. Imaging Clinical Findings: Conventional x-rays, AP, and true lateral or axillary views. AND Gadolinium MRI, ultrasound, or arthrogram shows positive evidence of deficit in rotator cuff.

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 Carrier presented testimony from Dr. G, an orthopedic surgeon, who asserted, in agreement with the IRO reviewer, that the claimant does not meet the criteria for a repeat arthroscopy and rotator cuff repair because the ODG does not specifically address a failed prior surgery. For similar reasons, no evidence-based medicine was proffered to address this scenario. Since both the IRO and Dr. G concur that the ODG does not apply, and because there was no evidence-based medicine on point, the analysis shifts to whether the proposed surgery is in alignment with the standard of care within the orthopedic surgery community. The Carrier has not shown by a preponderance of the evidence that the proposed surgery falls outside those standards, and therefore it has not overcome the determination of the IRO that the claimant is entitled to repeat right shoulder arthroscopy with rotator cuff repair.

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. The claimant sustained a compensable injury on _____.

2. Carrier delivered to Claimant and Provider a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Repeat right shoulder arthroscopy with rotator cuff repair 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.

. The preponderance of the evidence is not contrary to the decision of the IRO that repeat right shoulder arthroscopy with rotator cuff repair is/is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is entitled to repeat right shoulder arthroscopy with rotator cuff repair 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 **THE GRAY INSURANCE COMPANY INC.,** and the name and address of its registered agent for service of process is

ROBERT L. WALLACE
1717 EAST LOOP SUITE 333
HOUSTON, TEXAS 77029

Signed this 18th day of December, 2009.

Robert Greenlaw
Hearing Officer