

**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 January 26, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a right shoulder arthroscopy to re-attach biceps is not reasonably required health care for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by NG, ombudsman.  
Respondent/Carrier appeared and was represented by RJ, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his right shoulder on \_\_\_\_\_ while working for UPS. Claimant testified that he returned to work with some restrictions and three weeks later he suffered a ruptured biceps tendon when he lifted a package. Claimant was referred to Dr. N who recommended a right arthroscopic subacromial decompression with distal clavicle resection and superior labral anterior-posterior repair. Dr. N noted that the Claimant had evidence of a proximal biceps, long head rupture that he generally does not attempt to repair. Claimant testified that Dr. N advised him that he would repair the biceps tendon when he performed the right shoulder arthroscopy. On January 27, 2009, Claimant underwent an arthroscopic repair of the SLAP lesion with a distal clavicle resection of the acromioplasty. The operative report notes that the biceps tendon was completely torn and retracted into the bicipital groove. However, Dr. N did not attempt to repair the torn biceps tendon during the surgery. In a report dated February 11, 2009, Dr. N discussed tenodesis with the Claimant and reiterated to the Claimant that he does not repair ruptured biceps. Since the surgery, the Claimant has experienced persistent cramping in the shoulder with numbness and tingling in the lateral three digits of the right arm. A repeat MRI of the right biceps/upper extremity was performed on July 29, 2009 and was normal. Claimant's current treating doctor has recommended a right shoulder arthroscopy to repair the ruptured biceps tendon (tenodesis).

The IRO reviewer, a board certified orthopedic surgeon, determined that the proposed procedure was not medically necessary. The IRO reviewer referenced the Official Disability Guidelines (ODG) which specifies no surgery would be indicated if three or more months have elapsed. The reviewer noted that the Claimant's MRI studies were apparently normal and that the Claimant had normal range of motion and good strength in the shoulder. The IRO reviewer concluded that the request specifically lies outside of the guidelines recommended by the ODG.

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 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 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."

With regard to the requested procedure, the ODG provides as follows:

Not recommended except as indicated below. Nonsurgical treatment is usually all that is needed for tears in the proximal biceps tendons (biceps tendon tear at the shoulder). Surgery may be an appropriate treatment option for tears in the distal biceps tendons (biceps tendon tear at the elbow) for patients who need normal arm strength. (Mazzocca, 2008) (Chillemi, 2007) Ruptures of the proximal (long head) of the biceps tendon are usually due to degenerative changes in the tendon. It can almost always be managed conservatively, since there is no accompanying functional disability. Surgery may be desired for cosmetic reasons, especially by young body builders, but is not necessary for function. (Rantanen, 1999)

**ODG Indications for Surgery<sup>TM</sup> -- Ruptured biceps tendon surgery:**

**Criteria** for tenodesis of long head of biceps (Consideration of tenodesis should include the following: Patient should be a young adult; not recommended as an independent stand alone procedure. There must be evidence of an incomplete tear.) with diagnosis of incomplete tear or fraying of the proximal biceps tendon (The diagnosis of fraying is usually identified at the time of acromioplasty or rotator cuff repair so may require retrospective review.):

**1. Subjective Clinical Findings:** Complaint of more than "normal" amount of pain that does not resolve with attempt to use arm. Pain and function fails to follow normal course of recovery. PLUS

**2. Objective Clinical Findings:** Partial thickness tears do not have classical appearance of ruptured muscle. PLUS

**3. Imaging Clinical Findings:** Same as that required to rule out full thickness rotator cuff tear: Conventional x-rays, AP and true lateral or axillary view. AND Gadolinium MRI, ultrasound, or arthrogram shows positive evidence of deficit in rotator cuff.

**Criteria** for tenodesis of long head of biceps with diagnosis of complete tear of the proximal biceps tendon: Surgery almost never considered in full thickness ruptures. Also required:

**1. Subjective Clinical Findings:** Pain, weakness, and deformity. PLUS

**2. Objective Clinical Findings:** Classical appearance of ruptured muscle.

**Criteria** for reinsertion of ruptured biceps tendon with diagnosis of distal rupture of the biceps tendon: All should be repaired within 2 to 3 weeks of injury or diagnosis. A diagnosis is made when the physician cannot palpate the insertion of the tendon at the patient's antecubital fossa. Surgery is not indicated if 3 or more months have elapsed.

The Claimant testified that he was diagnosed with ruptured biceps tendon in December 2008 and that it was his understanding that the rupture would be repaired during the right shoulder arthroscopy performed in January 2009. This is not documented in the surgeon's medical records. In fact, Dr. N's records specifically state that he does not perform these types of repairs. In response to the decision of the IRO, Dr. G, the Claimant's current treating doctor states:

"I have seen other patients like (Claimant) who had chronic biceps tendon rupture's [sic]who complain of pain and cramping in the injured arm with deformity. Once corrected of with an appropriate biceps tenodesis the symptoms improve. To deny this patient the opportunity to improve his situation is unfair. His symptoms and complaints are consistent with his injury. If it is not repaired his symptoms will be permanent."

Dr. G did not testify at the hearing nor did he address the criteria outlined in the ODG for this type of procedure. Dr. G suggested that the guidelines are generalizations and do not take into account each individual patient as a physician does in his treatment; However, Dr. G does not offer evidence-based medicine contrary to the opinion of the IRO or the ODG and he specifically does not address the fact that more than three months have elapsed since the injury. Therefore, the Claimant failed to offer evidence based medical evidence to establish that the requested treatment exceeding ODG recommendations is healthcare reasonably required for the compensable injury. Based on the evidence presented, the Claimant did not meet his burden to present evidence based medicine evidence contrary to the IRO's determination.

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. Claimant sustained a compensable injury on \_\_\_\_\_, while 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 failed to show that he meets the criteria under the ODG for right shoulder arthroscopy to re-attach biceps.
4. Right shoulder arthroscopy to re-attach biceps is not reasonably required medical treatment 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 IRO that right shoulder arthroscopy to re-attach biceps is not reasonably required medical care for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to right shoulder arthroscopy to re-attach biceps 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 **LIBERTY MUTUAL INSURANCE CORPORATION** 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**

Signed this 26th day of January, 2010.

CAROL A. FOUGERAT  
Hearing Officer