

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 February 18, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to right shoulder arthroscopy, subacromial decompression (SAD), coraco acromial ligament (CAL), superior labral anterior and posterior tear (SLAP) repair, distal clavicle repair and brachial plexus for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by TT, ombudsman.
Respondent/Carrier appeared and was represented by KB, attorney.

BACKGROUND INFORMATION

The claimant sustained a compensable injury to the right shoulder for which he underwent right shoulder arthroscopy, rotator cuff repair, subacromial decompression and a Type II SLAP repair. on 2/4/09. The claimant subsequently developed a frozen shoulder and underwent a manipulation under anesthesia for improvement of the frozen shoulder condition. The claimant continued to have problems with his shoulder and sought a second opinion. The claimant's requesting doctor, Dr. M, requested the proposed surgical procedures. These procedures were initially denied by the Utilization Review Agent citing that the necessity of the requested procedures was not established due to failure to provide for review documentation of failure of conservative management including physical therapy progress notes and adequate pain medications and injections. These records were provided on a second request and another Utilization Review Agent denied the request citing that the claimant had previously undergone some of the requested procedures and no repeat imaging studies were submitted for review that demonstrated any continuing pathology. The Independent Review Organization (IRO) also upheld the previous adverse determinations citing that the records appeared to show that the previous surgery was correctly performed, that a cervical MRI was not undertaken to rule out other conditions, that it could not determine the purpose of a procedure for the brachial plexus and most notably, the requestor did not explain or provide a reasoning as to why it was necessary to re-repair the already repaired body parts. The IRO determined that the request did not conform to the Official Disability Guidelines (ODG) and Treatment Guidelines.

Texas Labor Code Section 408.021 provides 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 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. Texas Labor Code Section 401.011 (22a). Evidence based medicine means 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. Texas Labor Code Section 401.011 (18a). In accordance with the above statutory guidance, Rule 137.100 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 reasonably required. 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 diagnostic arthroscopy, the ODG provides as follows:

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)

With regard to surgery for rotator cuff repair:

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)

With regard to surgery for SLAP lesions:

Recommended for Type II lesions, and for Type IV lesions if more than 50% of the tendon is involved. See SLAP lesion diagnosis. The advent of shoulder arthroscopy, as well as our improved understanding of shoulder anatomy and biomechanics, has led to the identification of previously undiagnosed lesions involving the superior labrum and biceps tendon anchor. Although the history and physical examinations as well as improved imaging modalities (arthro-MRI, arthro-CT) are extremely important in understanding the pathology, the definitive diagnosis of superior labrum anterior to posterior (SLAP) lesions is accomplished through diagnostic arthroscopy. Treatment of these lesions is directed according to the type of SLAP lesion. Generally, type I and type III lesions did not need any treatment or are debrided, whereas type II and many type IV lesions are repaired. (Nam, 2003) (Pujol, 2006) (Wheless, 2007)

Dr. M did not provide oral testimony, but answered some of the claimant's written questions, which were in evidence. In his responses, Dr. M explained that he was actually requesting a diagnostic arthroscopy and once he could observe what procedure would be required during the arthroscopy, he would then perform that procedure. He reasoned that he would request several procedures at the inception of his request in order to notify the insurance carrier what could potentially be undertaken. He noted that he had ruled out the cervical spine and carpal tunnel syndrome as causes of the claimant's current complaints without the necessity of diagnostic

testing based on his experience and stated that the manipulation under anesthesia for the frozen shoulder could have re-torn the previous repairs. He further explained that the brachial plexus interscalene block requested was requested for the anesthesiologist to perform prior to surgery for pain control.

Dr. M appears to request the arthroscopy procedure as a diagnostic tool. The ODG states that most orthopedic surgeons can make their determinations based upon their examination and imaging studies. It limits the use of an arthroscopic procedure for diagnostic purposes to situations where the imaging is inconclusive and acute pain or functional limitation continues despite conservative care. Thus, it appears that here imaging studies were not undertaken, which is an integral part of taking the next step to requesting this procedure as a diagnostic tool. Dr. M did not provide evidence based medical evidence to overcome the protocol listed in the ODG for arthroscopy as a diagnostic tool, but merely relied upon his stated experience as the basis for his request.

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 document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The claimant did not present evidence based medicine contrary to the IRO's determination that the claimant is not entitled to right shoulder arthroscopy, subacromial decompression (SAD), coraco acromial ligament (CAL), superior labral anterior and posterior tear (SLAP) repair, distal clavicle repair and brachial plexus for the compensable injury of _____.
4. Right shoulder arthroscopy, subacromial decompression (SAD), coraco acromial ligament (CAL), superior labral anterior and posterior tear (SLAP) repair, distal clavicle repair and brachial plexus 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 right shoulder arthroscopy, subacromial decompression (SAD), coraco acromial ligament (CAL), superior labral anterior and posterior tear (SLAP) repair, distal clavicle repair and brachial plexus is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to right shoulder arthroscopy, subacromial decompression (SAD), coraco acromial ligament (CAL), superior labral anterior and posterior tear (SLAP) repair, distal clavicle repair and brachial plexus 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 FIRE UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DR. EAST, SUITE 300
IRVING, TEXAS 75063**

Signed this 23rd day of February, 2010.

Virginia Rodríguez-Gómez
Hearing Officer