

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 May 20, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to an outpatient left shoulder arthroscopic subacromial decompression and debridement with an open rotator cuff repair for the compensable injury of _____?

PARTIES PRESENT

Petitioner and Claimant appeared and were represented by MF, attorney. Respondent/Carrier appeared and was represented by JT, attorney.

BACKGROUND INFORMATION

Claimant, a juvenile corrections officer, sustained a compensable left shoulder injury on _____. Claimant initially received conservative medical care for her compensable injury, which included medication, physical therapy, and cortisone injections. Claimant underwent a left shoulder MRI on December 15, 2008, and a left shoulder X-ray of January 11, 2010. Dr. M, M.D., Claimant's treating doctor, referred Claimant to Dr. B, M.D., for a surgical consultation. Dr. B, a board certified orthopedic surgeon, examined Claimant on January 11, 2010, and recommended that Claimant undergo an outpatient left shoulder arthroscopic subacromial decompression and debridement (acromioplasty) with an open rotator cuff repair for the compensable injury.

Carrier's utilization review (UR) determined that the outpatient left shoulder acromioplasty with an open rotator cuff repair was not medically necessary for Claimant's compensable injury, and denied Dr. B's request. Carrier's UR opined that Claimant did not meet the criteria of the Official Disability Guidelines (ODG) for acromioplasty and open rotator cuff repair. Carrier's UR noted that Claimant did not have a left shoulder rotator cuff tear according to the MRI.

Dr. B requested an IRO review. On March 11, 2010, the IRO reviewer, a board certified orthopedic surgeon, reviewed Claimant's medical records, and determined that the outpatient left shoulder acromioplasty with an open rotator cuff repair was not medically necessary. The IRO reviewer cited the current edition of the ODG concerning acromioplasty and rotator cuff repair. The IRO reviewer determined that Claimant met the conservative care criteria under the ODG, but did not meet the subjective clinical findings, objective clinical findings, and imaging clinical findings criteria for acromioplasty under the ODG. The IRO reviewer further determined that Claimant did not meet any of the ODG criteria for a left open rotator cuff repair because

Claimant did not have a left rotator cuff tear, including a full thickness tear or partial thickness tear, according to the MRI.

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. 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 left shoulder arthroscopic subacromial decompression and debridement, the current edition of the ODG provides:

“Recommended as indicated below. Surgery for impingement syndrome is usually arthroscopic decompression (acromioplasty). However, this procedure is not indicated for patients with mild symptoms or those who have no limitations of activities. Conservative care, including cortisone injections, should be carried out for at least three to six months prior to considering surgery. Since this diagnosis is on a continuum with other rotator cuff conditions, including rotator cuff syndrome and rotator cuff tendonitis, see also Surgery for rotator cuff repair. (Prochazka, 2001) (Ejnisman-Cochrane, 2004) (Grant, 2004) Arthroscopic subacromial decompression does not appear to change the functional outcome after arthroscopic repair of the rotator cuff. (Gartsman, 2004) This systematic review comparing arthroscopic versus open acromioplasty, using data from four Level I

and one Level II randomized controlled trials, could not find appreciable differences between arthroscopic and open surgery, in all measures, including pain, UCLA shoulder scores, range of motion, strength, the time required to perform surgery, and return to work. (Barfield, 2007) Operative treatment, including isolated distal clavicle resection or subacromial decompression (with or without rotator cuff repair), may be considered in the treatment of patients whose condition does not improve after 6 months of conservative therapy or of patients younger than 60 years with debilitating symptoms that impair function. The results of conservative treatment vary, ongoing or worsening symptoms being reported by 30-40% patients at follow-up. Patients with more severe symptoms, longer duration of symptoms, and a hook-shaped acromion tend to have worse results than do other patients. (Hambly, 2007) A prospective randomized study compared the results of arthroscopic subacromial bursectomy alone with debridement of the subacromial bursa followed by acromioplasty in patients suffering from primary subacromial impingement without a rupture of the rotator cuff who had failed previous conservative treatment. At a mean follow-up of 2.5 years both bursectomy and acromioplasty gave good clinical results, and no statistically significant differences were found between the two treatments. The authors concluded that primary subacromial impingement syndrome is largely an intrinsic degenerative condition rather than an extrinsic mechanical disorder. (Henkus, 2009) A recent RCT concluded that arthroscopic acromioplasty provides no clinically important effects over a structured and supervised exercise program alone in terms of subjective outcome or cost-effectiveness when measured at 24 months, and that structured exercise treatment should be the basis for treatment of shoulder impingement syndrome, with operative treatment offered judiciously. (Ketola, 2009)

ODG Indications for Surgery™ -- Acromioplasty:

Criteria for anterior acromioplasty with diagnosis of 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. 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 impingement.

(Washington, 2002).”

With regard to the left shoulder rotator cuff repair, the current edition of the ODG provides:

“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).”

Dr. B, Petitioner, appealed the IRO decision. In accordance with Division Rule 133.308(t), Petitioner, the appealing party of the IRO decision, had the burden of overcoming the IRO decision by a preponderance of evidence-based medical evidence. Based on his examination of Claimant on January 11, 2010, Dr. B contended that Claimant was entitled to the left shoulder acromioplasty and left open rotator cuff repair. Claimant testified that she was relying on her medical records and the testimony of Dr. B that she is entitled to the surgery as recommended by Dr. B. Dr. B did not offer evidence-based medical evidence to overcome the IRO determination that the outpatient left shoulder arthroscopic subacromial decompression and debridement and with an open rotator cuff repair was not health care reasonably required for Claimant’s compensable injury. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to an outpatient left shoulder arthroscopic subacromial decompression and debridement with an open rotator cuff repair for the compensable injury of

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) Station Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was the employee of (Self-Insured), Employer.
 - C. Claimant sustained a compensable left shoulder injury on _____.
 - D. The Independent Review Organization determined that Claimant is not entitled to an outpatient left shoulder arthroscopic subacromial decompression and debridement with an open rotator cuff repair for the compensable injury of _____.
2. Carrier delivered to Petitioner and 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 met one of the four required criteria as outlined in the ODG for left shoulder acromioplasty, but did not meet three out of the four required criteria under the ODG for left shoulder acromioplasty.
 4. Claimant did not meet any of the required criteria as outlined in the ODG for left open rotator cuff repair.
 5. Petitioner did not provide evidence-based medical evidence to overcome the determination of the IRO.
 6. The requested outpatient left shoulder arthroscopic subacromial decompression and debridement with an open rotator cuff repair is not health care reasonably required for Claimant's 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 Independent Review Organization (IRO) that Claimant is not entitled to an outpatient left shoulder arthroscopic subacromial decompression and debridement with an open rotator cuff repair for the compensable injury of _____.

DECISION

Claimant is not entitled to an outpatient left shoulder arthroscopic subacromial decompression and debridement with an open rotator cuff repair 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 of _____, in accordance with Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **(Self-Insured)**, and the name and address of its registered agent for service of process is

For service in person, the address is:

**JB, EXECUTIVE DIRECTOR
(SELF-INSURED)
(STREET ADDRESS)
(BUILDING, FLOOR)
(CITY), TEXAS (ZIP CODE)**

For service by mail, the address is:

**JB, EXECUTIVE DIRECTOR
(SELF-INSURED)
(P.O. BOX)
(CITY), TEXAS (ZIP CODE)**

Signed this 28th day of May, 2010.

Wes Peyton
Hearing Officer