

**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 June 15, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to outpatient left shoulder arthroscopy/diagnostic to include CPT Code 29805?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by ombudsman JS. Respondent/Carrier appeared and was represented by attorney KP.

**BACKGROUND INFORMATION**

Claimant was the only witness at the June 15, 2010, CCH. On \_\_\_\_\_, Claimant was employed as a groundskeeper when he severely injured his left shoulder. On September 14, 2007, Claimant underwent arthroscopic left shoulder repair with intra-articular debridement and open rotator cuff repair.

On January 22, 2009, Claimant underwent left shoulder arthrography and CT procedure. The diagnostic study revealed an intact supraspinatus tendon without full thickness tear or musculature retraction. CT disclosed small supraspinatus and infraspinatus muscles and about 60% fatty atrophy of the subscapularis muscles.

According to Claimant's testimony, Dr. W, M.D., has recommended an outpatient left shoulder arthroscopy/diagnostic in order to figure out what is going on in his left shoulder. Dr. W provided a recent letter that during his exam, he found signs of a torn rotator cuff tear although recent imaging studies have not revealed such. Dr. W has requested preauthorization for the diagnostic study.

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 is considered a party 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 the evidence-based medical evidence."

An Independent Review Organization (IRO) reviewer, specializing in orthopedic surgery, upheld the prior adverse determination, and based his denial upon the *Official Disability Guidelines*.

Under the *Official Disability Guidelines* in reference to a diagnostic arthroscopy, the following recommendation is made:

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).

The IRO reviewer opined that there was nothing to support the medical necessity for outpatient left shoulder arthroscopy, diagnostic. The reviewer noted that the January 22, 2009, left shoulder arthrography and CT showed an intact supraspinatus tendon without full thickness tear or musculature retraction. As noted in the *ODG*, diagnostic arthroscopy should be limited to cases where imaging is inconclusive and acute pain or functional limitation continues despite conservative care. Even the Claimant's recommending physician conceded that recent imaging studies were not inconclusive.

In the instant case, Claimant has not met his burden of proof of overcoming the IRO determination by a preponderance of the evidence-based medicine.

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 (Self-Insured), Employer, and sustained a compensable injury.
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. Outpatient left shoulder arthroscopy/diagnostic to include CPT Code 29805 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 outpatient left shoulder arthroscopy/diagnostic to include CPT Code 29805 is not health care reasonably required for the compensable injury of \_\_\_\_\_.

## **DECISION**

Claimant is not entitled to outpatient left shoulder arthroscopy/diagnostic to include CPT Code 29805, 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 **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

**SELF-INSURED  
SUPERINTENDENT  
(STREET ADDRESS)  
(CITY), TX (ZIP CODE)**

Signed this 17<sup>th</sup> day of June, 2010

Cheryl Dean  
Hearing Officer