

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 July 21, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that arthroscopic subacromial decompression of the left shoulder, distal clavicle excision of the left shoulder, and purchase of a post-operative sling-shot brace and pain pump is reasonably required health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Carrier appeared and was represented by TR, attorney. Respondent/Subclaimant did not appear. Claimant appeared and was represented by PW, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____, while cranking down the landing gear on a trailer. Carrier accepted a left shoulder sprain/strain. Claimant's treating doctor requested preauthorization for arthroscopic subacromial decompression of the left shoulder, distal clavicle excision of the left shoulder, and purchase of a post-operative sling-shot brace and pain pump. Carrier refused preauthorization and the request was submitted to an Independent Review Organization (IRO). The IRO assigned the case to a physician reviewer who was identified as being board certified in orthopedic surgery and fellowship trained in upper extremities. The physician reviewer overturned Carrier's prior refusal of preauthorization. The physician reviewer gave the following analysis and explanation of his decision:

The request for arthroscopic management of this patient's chronic impingement syndrome is medically reasonable and necessary. The request meets the ODG criteria for subacromial decompression. The patient has failed adequate conservative care. Based on a careful review of all medical records, and for reasons stated above, the reviewer's medical assessment is that the request is medically necessary. (Emphasis added.)

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. Carrier does not maintain that the requested treatment is not reasonably required health care for Claimant's chronic impingement syndrome. It does assert that it is not liable for the payment of benefits for that care because the impingement syndrome is not part of the compensable injury.

A benefit contested case hearing was held on April 26, 2010. On April 29, 2010, the hearing officer rendered a decision that the compensable injury included rotator cuff syndrome and a rotator cuff strain, but did not include rotator cuff arthropathy, impingement syndrome, subacromial bursitis or acromioclavicular joint hypertrophy. That decision was appealed to the Division's Appeals Panel. On July 5, 2010, the Appeals Panel gave notice that the hearing officer's Decision of April 29, 2010, had become final under Texas Labor Code Section 410.204(c).

An injured employee is entitled to all health care reasonably required by the nature of a compensable injury and is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury; promotes recovery from the compensable injury; or enhances the ability of the employee to return to or retain employment. Texas Labor Code Section 408.021. Conversely, an injured worker is not entitled to health care under the Act for injuries or conditions that are not compensable. The physician reviewer found that the proposed surgery and purchase of durable medical equipment was reasonable and necessary health care for Claimant's chronic impingement syndrome. The impingement syndrome is not part of the compensable injury and the proposed surgery and purchase of durable medical equipment is not health care that cures, relieves, or promotes recovery from the compensable injury.

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 (Self-Insured), Employer.
 - C. The Texas Department of Insurance appointed (Independent Review Organization) as the Independent Review Organization in this matter.
 - D. (Independent Review Organization) determined that the requested procedure is reasonably necessary to treat Claimant's condition.
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. A contested case hearing has been held to determine the extent of Claimant's compensable injury and a Decision and Order has been entered holding that the compensable injury of _____, does not include the diagnosed conditions of rotator cuff arthropathy, impingement syndrome, subacromial bursitis or acromioclavicular hypertrophy.

4. The physician reviewer assigned to review the denial of the requested arthroscopic subacromial decompression of the left shoulder, distal clavicle excision of the left shoulder, and purchase of a post-operative sling-shot brace and pain pump determined that the requested procedure and purchase of durable medical equipment was medically reasonable and necessary for management of Claimant's chronic impingement syndrome.
5. Since Claimant's impingement syndrome is not part of the compensable injury of _____, the requested procedure is not reasonably necessary medical care for the compensable injury of _____.
6. Arthroscopic subacromial decompression of the left shoulder, distal clavicle excision of the left shoulder, and purchase of a post-operative sling-shot brace and pain pump 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 contrary to the decision of IRO that arthroscopic subacromial decompression of the left shoulder, distal clavicle excision of the left shoulder, and purchase of a post-operative sling-shot brace and pain pump is reasonably required medical care for the compensable injury of _____.

DECISION

Claimant is not entitled to arthroscopic subacromial decompression of the left shoulder, distal clavicle excision of the left shoulder, and purchase of a post-operative sling-shot brace and pain pump 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)
(STREET ADDRESS)
(CITY), TX (ZIP CODE)**

Signed this 23rd day of July, 2010.

KENNETH A. HUCHTON
Hearing Officer