

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.

ISSUE

A contested case hearing was held on 7/22/10, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to left shoulder arthroscopy, distal clavicle resection, and subacromial decompression for the compensable injury of _____?

PARTIES PRESENT

Respondent/Claimant appeared and was assisted by SG, an ombudsman. Respondent appeared and was represented by JL, an attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ suffering injuries to her left shoulder.

Pre-authorization for the proposed procedure was denied and a request for review by an IRO was made. The IRO reviewer, a physician board certified in orthopedic surgery upheld the denial of the left shoulder arthroscopy, distal clavicle resection, and subacromial decompression. In his explanation for his denial he opined that this procedure is not indicated because the criteria were not met in the ODG guidelines.

Claimant's treating doctor, Dr. B testified that based on his review of the claimant's medical records and his examinations and treatment, the claimant met the criteria outlined in the ODG regarding the left shoulder arthroscopy, distal clavicle resection, and subacromial decompression. The Claimant's expert failed to address all of the requirements for approval of the proposed procedure and the preponderance of the evidence based medicine is not contrary to the IRO decision.

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.

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 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 Arthroscopic subacromial decompression, the ODG provides,

ODG Indications for SurgeryTM -- Arthroscopic subacromial decompression (Acromioplasty):

Criteria for anterior acromioplasty with diagnosis of acromial impingement syndrome (80% of these patients will get better without surgery.)

Criteria for surgery for impingement syndrome 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. 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)

The claimant's expert failed to address all of the requirements for approval of the proposed procedure and the preponderance of evidence-based medicine is not contrary to the IRO decision. The ODG guidelines were not met. Therefore, claimant has not met the requisite evidentiary standard required to overcome the IRO decision and the preponderance of the

evidence is not contrary to the IRO decision that the claimant is not entitled to left shoulder arthroscopy, distal clavicle resection, and subacromial decompression.

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 (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, claimant was the employee of (Self-Insured).
 - C. On _____, claimant sustained a compensable injury.
2. Carrier delivered to claimant a single document stating the true corporate name of insured, and the name and street address of insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The IRO determined that the requested procedure was not medically necessary and the claimant failed to present evidence based medical evidence sufficient to overcome such opinion.
4. The requested left shoulder arthroscopy, distal clavicle resection, and subacromial decompression are 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 left shoulder arthroscopy, distal clavicle resection, and subacromial decompression repair are not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to left shoulder arthroscopy, distal clavicle resection, and subacromial decompression.

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 self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

(SELF-INSURED)
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 22nd day of July, 2010.

Susan Meek
Hearing Officer