

**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 22, 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 a right shoulder manipulation under anesthesia (MUA) for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was represented by RS, attorney. Petitioner/Provider Dr. B appeared without representation. Respondent/Self-Insured Carrier appeared and was represented by ST.

**BACKGROUND INFORMATION**

Claimant sustained a compensable right shoulder injury in the course and scope of her employment on \_\_\_\_\_. Claimant was diagnosed with a right shoulder impingement and a partial tear of the supraspinatus tendon. Claimant underwent physical therapy and injections for her shoulder without any improvement. On September 30, 2009, Dr. B performed a right shoulder arthroscopy. According to the medical records in evidence from Dr. B, Claimant noticed some improvement following her shoulder surgery. However, she still complained of pain, stiffness, and difficulty with overhead reaching. On November 13, 2009, Dr. B diagnosed Claimant with frozen shoulder and recommended a right shoulder MUA. The carrier's utilization review agents denied the request and Dr. B appealed the denial to an Independent Review Organization (IRO). The IRO, an orthopedic surgeon, upheld the Carrier's denial and Dr. B appealed the decision of the IRO to a Medical Contested Case Hearing.

**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 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 manipulation under anesthesia, the ODG provides as follows:

Under study as an option in adhesive capsulitis. In cases that are refractory to conservative therapy lasting at least 3-6 months where range-of-motion remains significantly restricted (abduction less than 90°), manipulation under anesthesia may be considered. There is some support for manipulation under anesthesia in adhesive capsulitis, based on consistent positive results from multiple studies, although these studies are not high quality. (Colorado, 1998) (Kivimaki, 2001) (Hamdan, 2003) Manipulation under anesthesia (MUA) for frozen shoulder may be an effective way of shortening the course of this apparently self-limiting disease and should be considered when conservative treatment has failed. MUA may be recommended as an option in primary frozen shoulder to restore early range of movement and to improve early function in this often protracted and frustrating condition. (Andersen, 1998) (Dodenhoff, 2000) (Cohen, 2000) (Othman, 2002) (Castellarin, 2004) Even though manipulation under anesthesia is effective in terms of joint mobilization, the method can cause iatrogenic intraarticular damage. (Loew, 2005) When performed by chiropractors, manipulation under anesthesia may not be allowed under a state's Medical Practice Act, since the regulations typically do not authorize a chiropractor to administer anesthesia and prohibit the use of any drug or medicine in the practice of chiropractic. (Sams, 2005) This case series concluded that MUA combined with early physical therapy alleviates pain and facilitates recovery of function in patients with frozen shoulder syndrome. (Ng, 2009) This study concluded that manipulation under anaesthesia is a very simple and noninvasive procedure for shortening the course of frozen shoulder, an apparently self-limiting disease, and can improve shoulder function and symptoms within a short period of time, but there was less improvement in post-surgery frozen shoulders. (Wang, 2007) See also the Low Back Chapter, where MUA is not recommended in the absence of vertebral fracture or dislocation.

The IRO reviewed the medical records and determined that the manipulation under anesthesia was not medically necessary in accordance with the ODG. The IRO upheld Carrier's denial of the request because Claimant's January 20, 2010 examination with Dr. B revealed that she had abduction of 130 to 140 degrees.

To overcome the IRO's opinion, Claimant and Petitioner, Dr. B, presented his expert testimony. Dr. B stated that he believed Claimant met the ODG criteria despite having 130 to 140 degrees of abduction. Dr. B stated that his concern was that Claimant's internal and external rotation was limited. Dr. B's testimony was considered. However, the preponderance of the evidence was not contrary to the findings of the IRO. Therefore, the IRO decision is upheld.

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.
  - C. Claimant sustained a compensable injury on \_\_\_\_\_.
  - D. The Independent Review Organization determined that the Claimant should not have a right shoulder manipulation under anesthesia.
2. Self-Insured 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 right shoulder manipulation under anesthesia 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 a right shoulder manipulation under anesthesia is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to a right shoulder manipulation under anesthesia for the compensable injury of \_\_\_\_\_.

**ORDER**

Self-Insured 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 28th day of July, 2010.

Jacquelyn Coleman  
Hearing Officer