

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 January 20, 2011, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to reinsertion of ruptured right triceps tendon distal with or without tendon graft and excision of tumor in soft tissue of the upper arm or elbow area for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RB, ombudsman.
Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury to his right shoulder and elbow from a fall at work. The services in dispute are reinsertion of ruptured right triceps tendon distal with or without tendon graft and excision of tumor in soft tissue of the upper arm or elbow area.

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 first procedure, the closest category in the ODG is regarding a repair of a biceps tear at the elbow which provides:

Recommended as indicated below. Surgery may be an appropriate treatment option for tears in the distal biceps tendons (biceps tendon tear at the elbow) for patients who need normal arm strength. Nonsurgical treatment is usually all that is needed for tears in the proximal biceps tendons (biceps tendon tear at the shoulder). (Mazzocca, 2008) (Chillemi, 2007) (Rantanen, 1999)

ODG Indications for Surgery™ -- Ruptured biceps tendon surgery:

Criteria for reinsertion of ruptured biceps tendon with diagnosis of distal rupture of the biceps tendon: All should be repaired within 2 to 3 weeks of injury or diagnosis. A diagnosis is made when the physician cannot palpate the insertion of the tendon at the patient's antecubital fossa. Surgery is not indicated if 3 or more months have elapsed. (Washington, 2002)

With regard to repair of the triceps tendon, no other evidence-based medicine was offered to establish the necessity of the proposed reinsertion of ruptured right triceps tendon distal with or without tendon graft procedure. Claimant therefore failed to meet his burden by a preponderance of evidence-based medical evidence.

With regard to excision of a tumor in the soft tissue of the upper arm or elbow area, Claimant is not pursuing any excision because there is no tumor. The nonexistence of a tumor is in accordance with the testimony of Claimant's treating doctor. Therefore, Claimant's appeal of the IRO decision is fatally flawed in that the two procedures can not be severed and disposed of separately herein.

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 (Employer), when he 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. Reinsertion of ruptured right triceps tendon distal with or without tendon graft and excision of tumor in soft tissue of the upper arm or elbow area 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 reinsertion of ruptured right triceps tendon distal with or without tendon graft and excision of tumor in soft tissue of the upper arm or elbow area is not reasonably required health care for the compensable injury of _____.

DECISION

Claimant is not entitled to reinsertion of ruptured right triceps tendon distal with or without tendon graft and excision of tumor in soft tissue of the upper arm or elbow area 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 21st day of January, 2011.

Charles T. Cole
Hearing Officer