MEDICAL CONTESTED CASE HEARING NO 12002
M6-11-34858-01

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 28, 2011 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to outpatient right shoulder arthroscopy, labrum repair and subacromial decompression for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by CN, ombudsman.
Respondent/Carrier was represented by HF, attorney, who appeared via telephone

BACKGROUND INFORMATION

Claimant testified that he injured his shoulder during the course and scope of employment when he felt a pop or tear as he picked up and threw tread overhead. He stated that he has been diagnosed with a tear in the shoulder and agrees with Dr. S's opinion that surgery is needed to relieve pain in the shoulder.

Dr. S, an orthopedic surgeon, has recommended outpatient right shoulder arthroscopy, labrum repair and subacromial decompression (SLAP tear or lesion). Three other doctors have opined that the requested procedures are not medically necessary.

Two utilization review agents were the first doctors to deny Dr. S's request. Dr. N, a medical doctor who is board certified in occupational medicine, and Dr. C, a medical doctor who is board certified in orthopedic surgery wrote that they relied on the *Official Disability Guidelines* (ODG) in finding the procedures not medically necessary. Dr. N wrote that the ODG does not recommend repair for all four types of tear. He concluded that since the tear is not classified by type, there is not sufficient information to determine if the tear should be repaired. Dr. C wrote that a previous arthrogram magnetic resonance imaging showed that the biceps labral complex is intact and thus Claimant does not have a type II or IV tear that would require surgery. In addition, he wrote that medical documentation did not reflect whether or not prior injections

were helpful and he commented that the mechanism of injury was not consistent with a SLAP tear.

The Independent Review Organization (IRO) upheld the adverse decisions of Drs. N and C. The report of the IRO indicates that the reviewer is a medical doctor who is board certified in orthopedic surgery. The report also indicates that the reviewer used the ODG and medical judgment, clinical experience and expertise in accordance with accepted medical standards in determining that the requested procedures are not medically necessary. The reviewer noted that medical documentation submitted on behalf of the requested procedures did not show impingement on physical examination, did not show a partial or full thickness rotator cuff tear, and did not show that Claimant had a type II or IV tear which would require surgery.

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."

The ODG provides the following for SLAP lesion diagnoses:

Recommend criteria below, and the use of shoulder arthroscopy. When the glenoid labrum becomes injured or torn, it is described as a labral tear. These tears may be classified by the position of the tear in relation to the glenoid (which is often called the "shoulder socket"). A SLAP tear is a tear in the labrum that covers the top part of the shoulder socket from front to back (Superior Labral tear from Anterior to Posterior). A SLAP tear occurs at the point where the long head of biceps tendon attaches. This type of tear occurs most commonly during falls on an outstretched arm. SLAP lesions have proven difficult to diagnose clinically. This study concluded that SLAP-specific physical examination results cannot be used as the sole basis of a diagnosis of a SLAP lesion. (Jones, 2007) Pathology of the SLAP lesion poses a significant challenge to the rehabilitation specialist due to the complex nature and wide variety of etiological factors associated with these lesions. (Wilk, 2005) SLAP lesions are becoming a more recognized cause of shoulder pain and disability. The diagnosis of these lesions is difficult due to vague symptoms and a high degree of overlap with other shoulder disorders, and this requires a high index of suspicion. Advances in MR arthrography may lead to advances in preoperative diagnosis of labral tears, but definitive diagnosis, classification, and management is greatly facilitated with the use of the shoulder arthroscopy. (Maurer, 2003) In a systematic review of studies evaluating 15 clinical tests for labral pathology against MRI or surgery, six accurate tests were identified from high quality studies: Biceps Load I, Biceps Load II, Internal Rotation Resistance (IRRT), Crank, Kim, and Jerk tests. (Munro, 2009) This systematic review concluded that there are no good physical examination tests for effectively diagnosing superior labrum anterior posterior (SLAP) shoulder tears, and special tests for SLAP tears are clinically limited and invalid. (Calvert, 2009) See also Surgery for SLAP lesions.

Criteria for Classification of SLAP lesions:

- *Type I:* Fraying and degeneration of the superior labrum, normal biceps (no detachment); Most common type of SLAP tear (75% of SLAP tears); Often associated with rotator cuff tears; These may be treated with debridement.
- *Type II:* Detachment of superior labrum and biceps insertion from the supra-glenoid tubercle; When traction is applied to the biceps, the labrum arches away from the glenoid; Typically the superior and middle glenohumeral ligaments are unstable; May resemble a normal variant (Buford complex); Three subtypes: based on detachment of labrum involved anterior aspect of labrum alone, the posterior aspect alone, or both aspects; Posterior labrum tears may be caused by impingement of the cuff against the labrum with the arm in the abducted and externally rotated position; Type-II lesions in patients older than 40 years of age are associated with a supraspinatus tear whereas in patients younger than 40 years are associated with participation in overhead sports and a Bankart lesion; Treatment involves anatomic arthroscopic repair.
- *Type III:* Bucket handle type tear; Biceps anchor is intact.

- *Type IV:* Vertical tear (bucket-handle tear) of the superior labrum, which extends into biceps (intrasubstance tear); May be treated with biceps tenodesis if more than 50% of the tendon is involved.
- (Wheeless, 2007)

The ODG provides the following concerning surgery for SLAP lesions:

> Recommended for Type II lesions, and for Type IV lesions if more than 50% of the tendon is involved. See SLAP lesion diagnosis. The advent of shoulder arthroscopy, as well as our improved understanding of shoulder anatomy and biomechanics, has led to the identification of previously undiagnosed lesions involving the superior labrum and biceps tendon anchor. Although the history and physical examinations as well as improved imaging modalities (arthro-MRI, arthro-CT) are extremely important in understanding the pathology, the definitive diagnosis of superior labrum anterior to posterior (SLAP) lesions is accomplished through diagnostic arthroscopy. Treatment of these lesions is directed according to the type of SLAP lesion. Generally, type I and type III lesions did not need any treatment or are debrided, whereas type II and many type IV lesions are repaired. (Nam, 2003) (Pujol, 2006) (Wheeless, 2007)

Claimant relied on the writings of Dr. S to show that the requested procedures are medically necessary for the compensable injury of (Date of Injury). Dr. S wrote a letter on June 16, 2011 in response to the objections raised by the IRO reviewer. Dr. S wrote that the medical documentation did show impingement on physical examination, noting the medical records he wrote in April of 2011. He agreed that only type II and IV tears should have surgery but said that only through an arthroscopy could he determine the type of tear and properly treat the tear. He said that he could not determine the type of tear through a magnetic resonance imaging, dismissing the IRO reviewer's comment about the previous imaging. Dr. S concluded that the procedures were necessary. His writing was not persuasive because he did not show that Claimant's condition has been diagnosed as one needing surgery. Rather, his writing indicated that he needed to determine if Claimant's condition warrants the requested surgery. Had the request been only for arthroscopy, the request would have probably been found to be medically necessary.

Claimant did not present sufficient evidence based medical evidence to overcome the decision of the IRO.

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 (Date of Injury), Claimant who was the employee of (Employer) when he sustained a compensable injury.

   C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of (Date of 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 right shoulder arthroscopy, labrum repair and subacromial decompression is not health care reasonably required for the compensable injury of (Date of Injury).

4. On (Date of Injury), Employer provided workers' compensation insurance as a self-insured.

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 Independent Review Organization that outpatient right shoulder arthroscopy, labrum repair and subacromial decompression is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to outpatient right shoulder arthroscopy, labrum repair and subacromial decompression for the compensable injury of (Date of Injury).

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, STATE ZIP)

Signed this 29th day of July, 2011.

Carolyn F Moore
Hearing Officer