

MEDICAL CONTESTED CASE HEARING NO 12007
M6-11-35158-01

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 August 30, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a left shoulder arthroscopic rotator cuff repair and subacromial decompression for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MH, ombudsman.

Respondent/Carrier appeared and was represented by NI, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury) when he slipped and fell striking his head and his left shoulder. An MRI of the left shoulder was performed on July 1, 2010 and revealed a fracture of the surgical neck of the humerus and proximal diaphysis, a small partial thickness tear of the supraspinatus tendon and severe osteoarthritis of the left AC joint. Claimant has undergone physical therapy and steroid injections and his treating doctor has recommended a left shoulder arthroscopic rotator cuff repair and subacromial decompression. The proposed surgery was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, identified as a board certified orthopedic surgeon, determined that the Claimant does not meet the official published guideline criteria for the disputed surgery. The IRO reviewer noted that the Claimant has a partial thickness rotator cuff tear and has failed greater than three months of conservative treatment; however the IRO reviewer went on to state that the Claimant does not have evidence of night pain or pain with active arc of motion and that he did not have any pain relief with the steroid injection. The IRO referred to an intervening injury without subsequent imaging to determine if there are additional findings; however, the Claimant did not sustain an intervening injury.

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 making decisions about the care of individual patients. 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 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."

ODG Indications for Surgery[™] -- Rotator cuff repair:

Criteria for rotator cuff repair 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 (Tenderness over the greater tuberosity is common in acute cases.) 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)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

Claimant testified that he completed 12 sessions of physical therapy and then 16 more sessions. Claimant testified that he has undergone injections, that he suffers from night pain and that he takes pain medications. Claimant offered a letter from his treating physician, Dr. D, an orthopedic surgeon, who stated that he has recommended a diagnostic left shoulder arthroscopy, possible subacromial decompression and possible rotator cuff repair as he feels this is the best course of action. Dr. D noted that the Claimant is still experiencing shoulder pain, especially at night, and that the Claimant has undergone more than three months of physical therapy and several intra-articular steroid injections which provided temporary relief. Dr. D did not address the other criteria set out in the ODG regarding the proposed surgery nor did he explain how the Claimant met the ODG criteria for this procedure. Specifically, Dr. D did not provide documentation of the reported night pain or pain with active arc of motion. The medical records also fail to document that the Claimant suffers from weak or absent abduction, atrophy and positive impingement sign. Although the Claimant testified that he suffers from night pain, based on the evidence presented, Claimant failed to provide an evidence-based medical opinion sufficient to overcome the determination of the IRO and the preponderance of the evidence-based medical evidence is not contrary to 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 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. The treating doctor requested the Claimant undergo a left shoulder arthroscopic rotator cuff repair and subacromial decompression for treatment of the compensable injury of (Date of Injury).
4. Claimant does not meet the requirements of the ODG for a left shoulder arthroscopic rotator cuff repair and subacromial decompression and he failed to present other evidence based medicine sufficient to overcome the determination of the IRO.
5. A left shoulder arthroscopic rotator cuff repair and subacromial decompression is not health care reasonably required for the compensable injury of (Date of Injury)

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-based medical evidence is not contrary to the decision of the IRO that a left shoulder arthroscopic rotator cuff repair and subacromial decompression is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a left shoulder arthroscopic rotator cuff 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 **MIDWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PARACORP INCORPORATED
3610 2 NORTH JOSEY LANE
CARROLLTON, TX 75007**

Signed this 30th day of August, 2011.

Carol A. Fougerat
Hearing Officer