

MEDICAL CONTESTED CASE HEARING NO. 12111  
M6-12-37516-01

**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 May 15, 2012 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 a biceps tendon repair and possible augmentation for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

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

Respondent/Carrier appeared and was represented by CL, attorney

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: Claimant.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits Numbers 1 and 2;

Claimant's Exhibits CL-1 through CL-10; and

Carrier's Exhibits CR-A through CR-I.

**BACKGROUND INFORMATION**

Two independent review organizations upheld denials by utilization reviewers who wrote that Claimant was not entitled to have surgery to repair a torn biceps tendon. All of the reviewers cited the *Official Disability Guidelines* (ODG) in denying the request for surgery.

The first request for surgery was denied by utilization reviewers on October 8 and October 20, 2010. In upholding the denials, the independent review organization reviewer wrote on November 1, 2010 that the request was for treatment unrelated to the compensable injury, commenting that even if the treatment were for the compensable injury, the surgery was outside the time limits established in the ODG.

After the first independent review organization denied the request, Claimant requested a medical contested case hearing. Upon learning that Carrier disputed Claimant's extent of injury, Claimant moved for and was granted an order dismissing the cause without prejudice. On August 16, 2011, the parties signed an agreement that Claimant's compensable injury included a right biceps tendon tear.

The second request for surgery was denied by utilization reviewers on September 27, 2011 and October 10, 2011. The Independent Review Organization upheld the denials on November 2, 2011. The reviewer wrote that the ODG indicates that surgery should not be performed if more than 3 months have elapsed, commenting that Claimant's injury occurred almost 3 years prior to the request.

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 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 surgery for ruptured biceps tendon at the elbow:

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)

Claimant testified that he was injured while in the course and scope of employment on (Date of Injury). He felt a pull in his arm followed by a sharp pain up the arm as he reached with the arm to pick up a motor that had rolled off a pallet and become stuck between the pallet and machinery. He followed Employer's direction to seek medical care from Dr. Y.

Dr. Y reviewed a magnetic resonance imaging in January of 2009 that showed a partial tear of the triceps tendon. She referred Dr. L when the physical therapy did not bring about improvement to Claimant's condition. Dr. L requested a second imaging. That imaging, taken on September 27, 2010, showed a tear of the biceps tendon. Within days, Dr. L requested authorization to repair the tear with surgery. Had the request been approved, surgery could have been performed within 3 months of the date the rupture was diagnosed.

Dr. L wrote on April 26, 2012 that not until he viewed a second magnetic resonance imaging was he able to reconcile diagnostic testing with his clinical findings and with Claimant's descriptions of the mechanism of injury and symptoms. The doctor wrote that Claimant was consistent in describing to all medical providers the mechanism of the injury and his symptoms following the injury.

Claimant argued that the facts of his case fall within Appendix D of the ODG. That appendix explains that a health care provider can document 1) extenuating circumstances to warrant treatment, 2) co-morbidities, 3) objective signs of functional improvement with treatment, 4) measurable goals, and 5) additional supporting evidence.

Dr. L's letter explains that misdiagnosis caused the delay in requesting surgery, noting that further delay can cause harm to Claimant. Neither he nor any other doctor noted any co-morbidities. He agreed that results for surgery are better when done as early as possible but said he has had success with such surgery when done years following a diagnosis. He explained that other surgeons who regularly practice treatment of repairing biceps tendons have acceptable results when performing surgery more than 3 months after a tear to a biceps tendon... He also included with his letter studies and abstracts from many sources including *The American Journal of Sports Medicine*, *Journal of Shoulder and Elbow Surgery*, *Clinical Orthopaedics and Related Research*, *Techniques in Hand & Upper Extremity Surgery*, and *The Journal of Bone and Joint Surgery*, to show the success of the surgery he requested. Some of the articles he included discussed surgery on chronic ruptures of tendons, defining chronic as having occurred more than 3 months prior to the surgery. His writing and articles were persuasive.

Claimant presented evidence based medical evidence to show that he is entitled to the surgery that his doctor has requested. His evidence was contrary to the decision of the Independent Review Organization.

Carrier argued that the reviewers who denied the surgery were correct and that Claimant's evidence was insufficient to show that Claimant is entitled to the surgery.

Even though not all of the evidence presented was 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).
  - C. On (Date of Injury), Employer provided workers' compensation insurance with Travelers Indemnity Company.
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. A biceps tendon repair and possible augmentation is 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 is contrary to the decision of the Independent Review Organization that biceps tendon repair and possible augmentation is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is entitled to biceps tendon repair and possible augmentation for the compensable injury of (Date of Injury).

### **ORDER**

Carrier is 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 **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE CO.**  
**d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.**  
**211 EAST 7th STREET STE.620**  
**AUSTIN, TX 78701-3218**

Signed this 17th day of May, 2012.

CAROLYN F. MOORE  
Hearing Officer