

MEDICAL CONTESTED CASE HEARING NO. 12113
M6-12-38969-01

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 18, 2012 to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to an MRI of the left shoulder?
2. Did Claimant timely file a request for IRO review?

PARTIES PRESENT

Claimant appeared and was assisted by WB, ombudsman. Carrier appeared and was represented by MD, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2.

Claimant's Exhibits C-1 through C-12.

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

BACKGROUND INFORMATION

Claimant is a 54-year-old police officer who said that he injured his left shoulder firing a shotgun to qualify for SWAT training for his Employer on (Date of Injury). On August 26, 2003, he was treated by RJ, M.D. with complaints of left shoulder and neck pain. A left shoulder x-ray was normal. Claimant was referred to EC, M.D. for complaints of neck and left arm pain on October

21, 2003. The diagnostic impression at that time was cervical radicular syndrome, and Claimant was treated with medications. Claimant continued to see Dr. C for the neck and renewal of prescriptions through August 29, 2011 at which time he again complained of left shoulder pain. On October 11, 2011, Dr. C felt that Claimant was having left shoulder rotator cuff tendinopathy and requested an MRI on October 17, 2011. This request was denied by Carrier by letter dated October 20, 2011. Dr. C then requested reconsideration on November 3, 2011, which was denied by Carrier by letter dated November 15, 2011. There was no proof as to when this letter was mailed. Claimant testified credibly that he first received the notice of denial of reconsideration the first week of December, 2011, and the records reflect receipt by the Division of his request for an IRO review by January 6, 2012, which would be timely. The IRO review was scheduled and resulted in the adverse determination for which Claimant seeks review.

The IRO reviewer, a board certified orthopedic surgeon of over 40 years' experience, upheld Carrier's denial of the requested MRI. The IRO reviewer relied upon the Official Disability Guidelines (ODG) as evidence-based medical evidence regarding the reasonableness and necessity of the MRI. The IRO reviewer pointed out that Claimant had initial complaints after the injury regarding the left shoulder, which was x-rayed with negative results. All subsequent treatment revolved around the cervical spine for the next 8 years and shoulder complaints are not documented again until August of 2011. The reviewer stated that no physical findings are cited which justify an MRI, and that there was no acute trauma to the shoulder, recent x-rays of the left shoulder and no attempt at conservative treatment. The ODG criteria were not found to have been met.

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 MRI of the shoulder, the ODG provides as follows:

Indications for imaging -- Magnetic resonance imaging (MRI):

- Acute shoulder trauma, suspect rotator cuff tear/impingement; over age 40; normal plain radiographs
- Subacute shoulder pain, suspect instability/labral tear
- Repeat MRI is not routinely recommended, and should be reserved for a significant change in symptoms and/or findings suggestive of significant pathology.

The IRO reviewer has pointed out that the above indications were not met in this case. Claimant brought no expert evidence indicating that the indications for MRI of the left shoulder listed in the ODG are met, or that other evidence based medicine supports Dr. C's request for an MRI in this case.

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).
 - C. On (Date of Injury), Employer provided workers' compensation insurance through self-insurance.
 - D. Claimant sustained a compensable injury on (Date of Injury).

E. This is a non-network claim.

F. The IRO determined that Claimant is not entitled to an MRI of the left shoulder.

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. Claimant's treating physician, EC, M.D. requested an MRI of the left shoulder on October 17, 2011, which was denied by Carrier's utilization reviewer on October 20, 2011.
4. Dr. C requested reconsideration of the MRI denial on November 3, 2011, which was denied by Carrier on November 15, 2011.
5. There was no proof of the date of mailing of the reconsideration denial to Dr. C or Claimant.
6. Claimant filed a request with the Division for IRO review of the denial of the MRI by January 6, 2012.
7. Claimant credibly testified that he did not receive notice of Carrier's denial of Dr. C's reconsideration request until the first week of December, 2011, so that his IRO request received by the Division on January 6, 2012 was timely.
8. An MRI of the left shoulder is not healthcare 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. Claimant timely requested IRO review of the denial of reconsideration of Dr. C's request for a left shoulder MRI.
4. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to a left shoulder MRI for the compensable injury of (Date of Injury).

DECISION

Claimant timely requested IRO review of the denial of reconsideration of Dr. C's request for a left shoulder MRI. Claimant is not entitled to a left shoulder MRI for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **(EMPLOYER), SELF-INSURED** and the name and address of its registered agent for service of process is:

**DEBORAH WATKINS
1500 MARILLA, 5D SOUTH
DALLAS, TX 75201**

Signed this 25th day of May, 2012.

Warren E. Hancock, Jr.
Hearing Officer