

MEDICAL CONTESTED CASE HEARING NO. 15017

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a repair of a left distal biceps tendon tear for the compensable injury of (Date of Injury).

ISSUE

A contested case hearing was held on December 15, 2014, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a repair of a left distal biceps tendon tear?

PARTIES PRESENT

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

EVIDENCE PRESENTED

Witnesses for Claimant/Petitioner: Claimant.

Witnesses for Carrier/Respondent: MVH, M.D.

The following exhibits were admitted into evidence:

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

Evidence for Claimant/Petitioner: Exhibits CL-1 through CL-6.

Evidence for Carrier/Respondent: Exhibits CR-A through CR-J.

BACKGROUND INFORMATION

Claimant was employed by (Employer). On (Date of Injury), he was attempting to singlehandedly load a desk onto a dolly when he felt a "pull" on his arm, shoulder, and chest. He was initially seen at St. David's Occupational Health. Claimant was initially treated with medication and rest. He presented to Concentra Medical Center on April 17, 2014 for further

treatment. He was diagnosed with a trapezius/rhomboid strain by AJ, M.D. Claimant was referred for physical therapy; however, his pain level kept him from completing the sessions.

An MRI performed on May 20, 2014 showed a normal left elbow. All tendons in the left arm were considered normal. Dr. J referred Claimant to MA, M.D. for evaluation. After obtaining multiple MRIs, Dr. A diagnosed possible cervical radiculitis. Dr. A then referred Claimant to M P, M.D. for another opinion. Dr. P had the MRI re-read. After a review, it appeared to the radiologist that there was some partial tearing of the biceps tendon. Dr. P requested preauthorization for surgery, but it was denied. The requested surgery was denied a second time and an Independent Review Organization (IRO) assessment was requested. TMF Health Quality Institute was appointed to act as IRO by the Texas Department of Insurance.

A board certified orthopedic surgeon was the reviewer through TMF Health Quality Institute. The reviewer upheld the Carrier's denial of the requested surgery because there was no objective finding of a ruptured biceps tendon.

DISCUSSION

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(s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is 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."

At the Contested Case Hearing, Claimant failed to provide evidence-based medicine in support of his requested procedure. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to a repair of a left distal biceps tendon tear for the compensable injury of (Date of Injury).

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Workers' Compensation Division of the Texas Department of Insurance.
 - B. On (Date of Injury), Claimant was the employee of (Employer).
 - C. On (Date of Injury), Claimant sustained a compensable injury.
 - D. On (Date of Injury). Employer provided workers' compensation insurance through New Hampshire Insurance Company, Carrier.
2. The Carrier delivered to the Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. TMF Health Quality Institute was appointed to act as Independent Review Organization by the Texas Department of Insurance.
4. The IRO determined that the Claimant was not entitled to a repair of a left distal bicep tendon tear.
5. Claimant did not provide evidence-based medical evidence in support of his requested surgery.
6. A repair of a left distal bicep tendon tear is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 (IRO) that the Claimant is not entitled to a repair of a left distal bicep tendon tear for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a repair of a left distal bicep tendon tear 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 **NEW HAMPSHIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
211 E. 7TH STREET, SUITE 620
(CITY), TEXAS 78701**

Signed this 18th day of December, 2014.

Carolyn Cheu Mobley
Hearing Officer