

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 the preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to right elbow arthroscopy, lysis of adhesions/debridement with manipulation under anesthesia for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on February 9, 2015, 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 right elbow arthroscopy, lysis of adhesions/debridement with manipulation under anesthesia for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by IN, ombudsman. Respondent/Carrier appeared and was represented by LGM, attorney.

DISCUSSION

It is undisputed that Claimant sustained a compensable injury on (Date of Injury). On October 2, 2014, RB, M.D., Petitioner/Claimant's (Claimant) primary treating provider, noted that he discussed operative and nonoperative treatment with Claimant and he was going to proceed with right elbow arthroscopy manipulation under anesthesia. The preauthorization request for a right elbow arthroscopy, lysis of adhesions/debridement with manipulation under anesthesia, went to a Utilization Review Agent (URA) reviewer who initially denied the request, and then the request was submitted for reconsideration by another URA reviewer, who also denied the request. The Claimant appealed the denials through an Independent Review Organization (IRO). The IRO reviewer upheld the previous denials, and Claimant appealed that determination by requesting a Medical Contested Case Hearing. It was Claimant's position the preponderance of the evidence was against the IRO determination and he should be entitled to the disputed treatment. It was the Respondent/Carrier's (Carrier) position that the IRO determination should be upheld.

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 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 guidelines concerning the following:

Right Elbow Arthroscopy

Definition: An arthroscope is a tool like a camera that allows the physician to see the inside of a joint, and the surgeon is sometimes able to perform surgery through an arthroscope, which makes recovery faster and easier. Having started as a mainly diagnostic tool, arthroscopy provides the surgeon with a minimally invasive treatment option for a wide variety of indications. See the Surgery listings for detailed information on specific treatments that may be done arthroscopically.

Manipulation under anesthesia (MUA)

Not recommended. No quality studies. In case series outcomes for stiff elbow may be no better than the natural history of the condition. (Duke, 1991)

The IRO doctor, a medical doctor board certified in orthopedic surgery, thought the requested treatment was not medically necessary, noting he reviewed the records and it appeared Claimant has a mild grade soft tissue contracture. He further noted that Claimant did not appear to have a bony block to motion and his extension range of motion was within the commonly accepted functional range of motion. He also explained that he reviewed the literature concerning elbow flexion contractures and surgical intervention is not supported for elbow flexion contractures at 15 degrees.

In support of his position, Claimant testified that he has pain with range of motion and could not fully extend his elbow. Claimant further testified that he experiences limitations stemming from his injury and desires further treatment in order to fully recover. Claimant also offered a letter dated November 4, 2014, from Dr. B, who indicated that Claimant had a 15 degree flexion contracture with pain and he had requested surgery for the elbow and was denied. Dr. B also noted that Claimant had worked diligently in physical therapy and was unable to get full motion to his elbow. However, neither Dr. B nor any other of Claimant's treating providers cited the ODG treatment guidelines or any other evidence-based medical evidence to support the medical necessity of the proposed treatment. Moreover, Dr. B did not rebut the IRO's finding that evidence-based medical evidence did not support surgical intervention for a 15 degree flexion contracture. As Claimant did not overcome the IRO determination by a preponderance of the evidence-based medical evidence, he has accordingly failed to meet his burden of proof.

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 Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Insurance Company of the State of Pennsylvania, Carrier.
 - D. On (Date of Injury), Claimant 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 IRO determined Claimant is not entitled to right elbow arthroscopy, lysis of adhesions/debridement with manipulation under anesthesia for the compensable injury of (Date of Injury).
4. The right elbow arthroscopy, lysis of adhesions/debridement with manipulation under anesthesia 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 is not contrary to the decision of the IRO that the Claimant is not entitled to right elbow arthroscopy, lysis of adhesions/debridement with manipulation under anesthesia for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to right elbow arthroscopy, lysis of adhesions/debridement with manipulation under anesthesia 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET SUITE 620
AUSTIN, TEXAS 78701-3218**

Signed this 10th day of February, 2015.

Kara Squier
Hearing Officer