

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 Independent Review Organization (IRO) that Claimant is not entitled to a left shoulder with superior labrum anterior posterior repair for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on March 23, 2015 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a left shoulder with superior labrum anterior posterior repair for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by CS, attorney.
Respondent/Carrier was represented by CF, 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-13.

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

DISCUSSION

On (Date of Injury), Claimant sustained a compensable injury when the truck she was driving, went into a pot-hole, causing her to lose control of the steering wheel. As a result of the compensable injury, Claimant injured her left pinky finger, left elbow and left shoulder.

Claimant did have an MRI to her left shoulder on September 23, 2013, which noted a SLAP III tear. The MRI finding of the left shoulder was disputed by the Carrier, and on June 2, 2014, a Contested Case Hearing was held to determine whether or not the left shoulder MRI finding was part of the compensable injury. Claimant prevailed at the contested case hearing and surgery to the left shoulder has been requested by her treating physician. The requested procedure was denied by the Carrier's utilization review agents and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a physician board certified in orthopedic surgery, noted the multiple medical records he reviewed, including the MRI study of the left shoulder. The reviewer opined that "Type III slap (sic) tears does not require surgery according to ODG Guidelines. Under the ODG Guidelines for surgery, you must have had 3 months of conservative treatment, (NSAIDs, Physical Therapy). Therefore, the request for 1 left shoulder with Superior Labrum Anterior-Posterior Repair is non-certified."

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."

Recommended for Type II lesions, and for Type IV lesions if more than 50% of the tendon is involved. See SLAP lesion diagnosis. The advent of shoulder arthroscopy, as well as our improved understanding of shoulder anatomy and biomechanics, has led to the identification of previously undiagnosed lesions involving the superior labrum and biceps tendon anchor. Although the history and physical examinations as well as improved imaging modalities (arthro-MRI, arthro-CT) are extremely important in understanding the pathology, the definitive diagnosis of superior labrum anterior to posterior (SLAP) lesions is accomplished through diagnostic arthroscopy. Treatment of these lesions is directed according to the type of SLAP lesion. Generally, type I and type III lesions did not need any treatment or are debrided, whereas type II and many type IV lesions are repaired. (Nam, 2003) (Pujol, 2006) (Wheless, 2007) Shoulder surgery for SLAP tears may not be successful for many patients. For example, of pitchers who failed physical rehabilitation and then went on to surgery just 7% were able to play as well as they had before, but for pitchers who just underwent physical rehabilitation, 22% were able to play as well as they previously had. (Fedoriw, 2012)

Recent research: Study quality is not high, but it is consistent, and it continues to support this procedure for selected patients. Arthroscopic repair of SLAP lesions with extensive tears can achieve good outcomes. (Huang, 2013) Good to excellent results in Oxford shoulder scores were reported in 94% of patients, and no statistical correlation was found between the patient's age, female gender, and outcome scores. (Mok, 2012) Although the rehabilitation process may be affected by a protracted period of pain, a long-term limitation of ROM after surgery is very unlikely. The results in this study are encouraging and the authors recommend anatomic restoration and repair of type II SLAP lesions. (Boesmueller, 2012) Long-term outcomes after isolated labral repair for SLAP lesions are good and independent of age. Satisfaction was rated excellent/good for 88% of patients at 5 years. Postoperative stiffness was registered in 13.1% of the patients. (Schrøder, 2012) While SLAP lesions of the shoulder that require surgical repair are relatively uncommon, there is a substantial increase in the

number of arthroscopic SLAP repairs that is significantly more rapid than the rising rate of outpatient orthopedic surgical procedures. In addition, there is a significant increase in the age of patients who are being treated with arthroscopic SLAP repairs. (Onyekwelu, 2012) In 87% of cases, a good or excellent functional outcome can be anticipated after arthroscopic repair of type II SLAP lesions, but variables associated with a poor outcome include Workers' Compensation status. (Denard, 2012) Non-contrast MRI is sufficient for rotator cuff tears, and contrast enhancement is recommended for SLAP tears. If there is concern about the possibility of labral injury then imaging with arthrogram should be considered. (Spencer, 2013) (Farshad-Amacker, 2013) (Arnold, 2012) (Major, 2011) See also Biceps tenodesis.

Criteria for Surgery for SLAP lesions:

- After 3 months of conservative treatment (NSAIDs, PT)
- Type II lesions (fraying and degeneration of the superior labrum, normal biceps, no detachment)
- Type IV lesions (more than 50% of the tendon is involved, vertical tear, bucket-handle tear of the superior labrum, which extends into biceps, intrasubstance tear)
- Generally, type I and type III lesions do not need any treatment or are debrided
- History and physical examinations and imaging indicate pathology
- Definitive diagnosis of SLAP lesions is diagnostic arthroscopy
- Age under 50 (otherwise consider Biceps tenodesis).

Claimant relies on the office notes and reports from her treating physician in order to establish that the ODG have been met. However, the treating physician does not address the ODG and does not explain why Claimant's condition would require the proposed surgery, especially since the ODG states that SLAP III lesions, in general, do not need any treatment or are debrided.

The medical evidence presented in support of the necessity of the proposed procedure is insufficient and is not supported by evidence-based medicine. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to a left shoulder with superior labrum anterior posterior repair for the compensable injury of (Date of Injury)

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), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Starr Indemnity & Liability Company, 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 that the requested service was not reasonable and necessary health care for the compensable injury of (Date of Injury).
 4. Claimant did not present evidence-based medical evidence contrary to the IRO decision.
 5. A left shoulder with superior labrum anterior posterior repair 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 a left shoulder with superior labrum anterior posterior repair is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a left shoulder with superior labrum anterior posterior repair 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 **STARR INDEMNITY & LIABILITY COMPANY**, and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136**

Signed this 27th day of March, 2015.

Teresa G. Hartley
Hearing Officer