

MEDICAL CONTESTED CASE HEARING NO. 16009

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. 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 manipulation under anesthesia of the left shoulder or injection of the left shoulder following manipulation for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on November 17, 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 manipulation under anesthesia of the left shoulder or injection of the left shoulder following manipulation for the compensable injury of (Date of Injury)?

PARTIES PRESENT

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

Respondent/Carrier appeared and was represented by JM, attorney.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury to her left shoulder and left forearm on (Date of Injury). Claimant was working on a "line" at a distribution warehouse when a box came down the line that was heavier than normal. Claimant picked up the box and it shifted, almost causing Claimant to fall. Claimant felt her shoulder "pop" but continued to work until shoulder became numb. Claimant was sent to Amcare, where her shoulder was iced. Subsequently, Claimant had 6 sessions of physical therapy, but her pain did not get better. Claimant then had surgery and injections on her left elbow and left shoulder. After the surgery, Dr. S recommended more physical therapy, which was approved. Before Claimant finished her physical therapy, Dr. S recommended manipulation under anesthesia (MUA) of the left shoulder and an injection following the MUA, also in the left shoulder. No other treatment was recommended. The MUA and injection were both denied by the Carrier and referred to an IRO who determined that the recommended procedures were not medically necessary.

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 the requested procedures, the ODG provides as follows:

MANIPULATION UNDER ANESTHESIA (MAU)

Manipulation under anesthesia (MUA) is under study as an option in adhesive capsulitis. In cases that are refractory to conservative therapy lasting at least 3-6 months where range of motion remains significantly restricted (abduction less than 90 degrees), manipulation under anesthesia may be considered. There is some support for manipulation under anesthesia in adhesive capsulitis, based on consistent positive results from multiple studies, although these studies are not high quality. (Colorado, 1998) (Kivimaki, 2001) (Hamdan, 2003)

The IRO reviewer, a doctor of medicine, board certified orthopedic surgeon concluded “the requested manipulation under anesthesia at the left shoulder would not be supported due to documentation of specific range of motion deficits. Numerical values for range of motion in abduction, forward flexion, and internal and external rotation were not stated.” Additionally, the IRO doctor stated there was a lack of documentation that showed that even conservative care, 3-6 months of physical therapy, had been completed as recommended by the guidelines. The IRO doctor opined that without the MUA there would be no need for an injection of the left shoulder.

In Dr. S's answers to specific questions he noted that he was familiar with the ODG, but he did not answer the question which asked whether the requested treatment was recommend for the injury Claimant suffered. Dr. S also did not provide any studies or trials to support the necessity of the requested procedure, and he did not persuasively explain why the requested treatment comports with the ODG. Accordingly, Claimant failed to present evidence-based medical evidence as to the appropriateness of the proposed procedures.

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), Employer, provided workers' compensation insurance with American Zurich Insurance Company, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury in the course and scope of her employment, and Carrier has accepted a compensable injury in the nature of a left shoulder trapezius strain and left forearm strain/epicondylitis.
 - E. The Petitioner timely appealed the decision of the IRO/MDRO on August 21, 2015.
 - F. The Independent Review Organization determined that Claimant should not have manipulation under anesthesia of the left shoulder or an injection of the left shoulder following manipulation.
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. Neither a left shoulder manipulation under anesthesia nor an injection following the manipulation are 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 manipulation under anesthesia of the left shoulder or injection of the left shoulder following manipulation is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to manipulation under anesthesia of the left shoulder or injection of the left shoulder following manipulation 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 **AMERICAN ZURICH INSURANCE COMPANY** 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 1st day of December, 2015.

AMANDA BARLOW
Hearing Officer