MEDICAL CONTESTED CASE HEARING NO. 16011

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 the Claimant is not entitled to outpatient right shoulder labral repair and biceps tenodesis for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on December 3, 2015, with Kara Squier, a Division hearing officer, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to outpatient right shoulder labral repair and biceps tenodesis 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 GP, adjuster.

DISCUSSION

It is undisputed that Claimant sustained a compensable injury on (Date of Injury). The evidence established that Claimant's surgeon, RER, M.D., recommended Claimant for an outpatient right shoulder labral repair and biceps tenodesis. The preauthorization request 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 principal reason for both denials was the fact that Claimant's MRI report did not provide evidence of a SLAP tear or moderate inflammation of the biceps tendon.

The Claimant appealed the denial of reconsideration to an Independent Review Organization (IRO). The IRO reviewer upheld the previous denials and indicated that a labral repair and biceps tenodesis is necessary for patients with imaging studies confirming significant pathology and that all conservative treatment has been completed. The IRO reviewer noted that the records showed Claimant underwent four physical therapy sessions as of the date of the IRO. The reviewer also noted that there was no information submitted regarding whether Claimant had completed a full course of conservative therapy. Additionally, there was no information

submitted regarding Claimant's ongoing home exercise program. According to the previous URA reports, the medical records indicated that Claimant admitted he was not performing a home exercise program. The IRO reviewer also specified that there was no imaging study that revealed evidence of a SLAP lesion and no information to support that Claimant had significant labral involvement.

Claimant appealed the IRO determination by requesting this 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 as follows regarding the procedure in dispute:

Labrum tear surgery

See Surgery for SLAP lesions; Biceps tenodesis; & Bankart repairs. Labral tears or lesions can be located either above (superior) or below (inferior) the middle of the glenoid socket. A SLAP lesion (superior labrum, anterior [front] to posterior [back]) is a tear of the rim above the middle of the socket that may also involve the biceps tendon. A tear of the rim below the middle of the glenoid socket that also involves the inferior glenohumeral ligament is called a Bankart lesion. When the glenoid labrum becomes injured or torn, it is described as a labral tear. These tears may be classified by the position of the tear in relation to the glenoid (which is often called the "shoulder socket"). A Bankart tear is a tear in the labrum located in the front, lower (anterior, inferior) part of the shoulder socket. This type of tear occurs most commonly during a shoulder dislocation. A Bankart tear makes the shoulder more prone to recurrent dislocations. A SLAP tear is a tear in the labrum that covers the top part of the shoulder socket from front to back (Superior Labral tear from Anterior to Posterior). A SLAP tear occurs at the point where the long head of biceps tendon attaches. This type of tear occurs most commonly during falls on an outstretched arm. Most superior labral tears can be treated with anti-inflammatory medications, activity modification and physical therapy, but if nonoperative treatment fails, surgery may be indicated. (TP, 2013) Biceps tenodesis is an option to SLAP repair in older patients.

Surgery for biceps tenodesis

Recommended as an option for type II or type IV SLAP lesions in patients over 40 years of age. See SLAP lesion diagnosis. Biceps tenodesis (suture of the end of the tendon to the bone) is a surgical procedure usually performed for the treatment of refractory biceps tendonitis of the shoulder. A biceps tenodesis may be performed as an isolated procedure, or part of a larger shoulder surgery such as a rotator cuff repair. Patients with biceps tendon problems may have a detachment of the biceps tendon from the socket of the shoulder (a SLAP tear), or they may have inflammation and irritation of the biceps tendon itself. A biceps tenodesis is usually performed in patients over the age of 40, whereas other procedures such as a SLAP repair may be attempted in younger patients. Individuals older than 35 years with an isolated type II SLAP lesion had a shorter postoperative recovery, a more predictable functional outcome, and a higher rate of satisfaction and return to activity with biceps tenodesis compared with a biceps repair. Based on these observations, biceps tenodesis is preferable to biceps repair for isolated type II SLAP lesions in non-overhead athletes older than 35 years. (Denard, 2014) Surgical repair remains the gold standard for most type II and type IV SLAP lesions that fail nonoperative management. However, more recently reported data has demonstrated unacceptably high failure rates with primary repair of type II SLAP lesions. Biceps tenodesis may offer an acceptable, if not better, alternative to primary repair of SLAP lesions. This study adds to the evolving literature supporting biceps tenodesis as a viable treatment for type II and IV SLAP lesions. (Gottschalk,

2014) Successful arthroscopic repair of symptomatic superior labral tears in young athletes has been well documented. Superior labral repair in patients older than 40 years is controversial, with concerns for residual postoperative pain, stiffness, and higher rates of revision surgery. While studies show that good outcomes can be obtained with SLAP repair in an older cohort of patients, age over 40 and workers' compensation status are independent risk factors for increased surgical complications. The cumulative evidence supports labral debridement or biceps tenotomy over labral repair when an associated rotator cuff injury is present. (Erickson, 2014) Biceps tenodesis is a viable treatment option for SLAP repair. (Huri, 2014) Practice trends indicate that the proportion of SLAP repairs has decreased over time, with an increase in biceps tenodesis and tenotomy. Increased patient age correlates with the likelihood of treatment with biceps tenodesis or tenotomy versus SLAP repair. For patients with isolated SLAP lesions, the proportion of SLAP repairs decreased from 69.3% to 44.8%, while biceps tenodesis increased from 1.9% to 18.8%, and biceps tenotomy increased from 0.4% to 1.7%. For patients undergoing concomitant rotator cuff repair, SLAP repair decreased from 60.2% to 15.3%, while biceps tenodesis or tenotomy increased from 6.0% to 28.0%. There was a significant difference in the mean age of patients undergoing SLAP repair (37.1 years) versus biceps tenodesis (47.2 years) versus biceps tenotomy (55.7 years). (Patterson, 2014) See also Surgery for SLAP lesions.

Criteria for Surgery for Biceps tenodesis:

> History and physical examinations and imaging indicate significant biceps tendon pathology
>
> After 3 months of failed conservative treatment (NSAIDs, injection and PT)
>
> Advanced biceps tendinopathy
>
> Type II SLAP lesions (fraying and some detachment)
>
> Type IV SLAP lesions (more than 50% of the tendon is involved, vertical tear, bucket-handle tear of the superior labrum, which extends into the biceps, instrasubstance tear)
>
> Generally, type I and type III SLAP lesions do not need any treatment
>
> Also patients undergoing concomitant rotator cuff repair
>
> Age 40 and older
>
> Below age 40 if undergoing concomitant rotator cuff repair

Since Claimant is the party challenging the IRO decision, he has the burden of proof to overcome the decision issued by the IRO by a preponderance of evidence-based medical evidence. *See* Rule 133.308(s). Evidence-based medical evidence entails the opinion of a qualified expert that is supported by evidence-based medical evidence, if evidence-based

medicine exists. In order to meet his evidentiary burden, Claimant relied on a letter dated November 12, 2015, from Dr. R.

In his letter, Dr. R explained that Claimant underwent an arthrogram that demonstrated an extensive labral tear. He further indicated that the arthrogram was not reviewed when the surgery was denied, and it is his opinion that surgery is medically necessary. The evidence established that the arthrogram was performed on September 2, 2015, and the URA decisions were dated July 30, 2015, and August 14, 2015, respectively. The IRO decision notice was dated October 5, 2015. According to the IRO decision, the September 2, 2015, arthrogram was not provided to the IRO for review.

Although the evidence established the IRO reviewer did not review the arthrogram, Claimant still had to present evidence-based medical evidence to demonstrate the preponderance of the evidence is contrary to the IRO's decision. Although Dr. R provided an opinion that the arthrogram revealed Claimant had a labral tear and he needed surgery, his opinion did not persuasively explain why the preponderance of the evidence-based medical evidence is contrary to the decision of the IRO. Moreover, his opinion did not cite the ODG or other evidence-based medical evidence. No doctor provided an explanation as to how Claimant's previous treatment and imaging studies met the ODG criteria for the disputed treatment, or provide other evidence-based medicine to support the necessity of this procedure. 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. Consequently, the preponderance of the medical evidence is not contrary to the decision of the IRO that Claimant is not entitled to outpatient right shoulder labral repair and biceps tenodesis.

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 New Hampshire Insurance 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 Claimant is not entitled to outpatient right shoulder labral repair and biceps tenodesis for the compensable injury of (Date of Injury).

4. The outpatient right shoulder labral repair and biceps tenodesis 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 outpatient right shoulder labral repair and biceps tenodesis for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to outpatient right shoulder labral repair and biceps tenodesis 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 **NEW HAMPSHIRE 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 3rd day of December, 2015.

Kara Squier
Hearing Officer