

MEDICAL CONTESTED CASE HEARING NO. 15046

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.

ISSUE

A contested case hearing was held on May 26, 2015 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to right shoulder examination under anesthesia, scope, repair glenoid labrum tear for the compensable injury of (Date of Injury)?

PARTIES PRESENT

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

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

EVIDENCE PRESENTED

The following people testified:

For Claimant: Claimant; and

For Carrier: No one.

The following exhibits were admitted into evidence:

Hearing Officer Exhibits Numbers 1 and 2;

Claimant's Exhibits CL-1 through CL-8; and

Carrier's Exhibits CR-1 through CR-10.

BACKGROUND INFORMATION

Three reviewers wrote that documents sent to them did not show that Claimant's tear was classified as a tear for which the *Official Disability Guidelines* recognize as needing surgery. Those reviewers were DT, M.D., JR, M.D., and the reviewer for the Independent Review Organization.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonable 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 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."

The ODG recommends surgery for Type II and Type IV SLAP lesions, providing the following criteria for surgery:

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 tendennis).

Claimant's evidence was not persuasive in showing that he has a Type II or Type IV SLAP lesion. GS, M.D., who recommended surgery, did not classify Claimant's tear as either a Type II or Type IV.

Claimant contented that because Dr. S recommended surgery, then surgery should be authorized. Claimant's argument was not persuasive.

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, who was the employee of (Employer), sustained a compensable injury.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Texas Mutual Insurance Company.
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. Right shoulder examination under anesthesia, scope, repair glenoid labrum tear 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 Independent Review Organization that right shoulder examination under anesthesia, scope, repair glenoid labrum tear is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to right shoulder examination under anesthesia, scope, repair glenoid labrum tear 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 26th day of May, 2015.

CAROLYN F. MOORE
Hearing Officer