

SOAH DOCKET NO. 453-04-0007M2R

____,
Petitioner

V.

**BITUMINOUS CASUALTY
CORPORATION,
Respondent**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

____ (Claimant) has appealed a decision of an independent review organization (IRO) on behalf of the Texas Workers= Compensation Commission (TWCC). The decision concerned the Bituminous Casualty Corporation’s (Carrier’s) denial of P.E. Garcia ’ s, M.D., (Provider’s) request for pre-authorization of medical services for the Claimant. The IRO found that the request for a third decompression surgery for the Claimant’s right shoulder was not reasonably medically necessary to treat the Claimant=s compensable injury.

The only disputed issue is whether the third decompression surgery is necessary for that purpose. As set out below, the Administrative Law Judge (ALJ) cannot find that a third decompression surgery on the Claimant’s right shoulder is reasonably medically necessary to treat the Claimant ’ s compensable injury. The request is denied.

II. FINDINGS OF FACT

1. On ____, the Claimant sustained a work-related injury to his right shoulder and head.
2. Since his injury, the Claimant has complained of pain and weakness in his right shoulder.
3. On the date of injury, the Claimant ’ s employer was ____, and the Carrier was its workers= compensation insurance carrier.
4. On May 8, 2001, W.A. Del Gallo, M.D., performed decompression surgery on the Claimant’s right shoulder to relieve pain in that shoulder.
5. Following that surgery and adequate recovery time, the Claimant still complained of pain in his right shoulder.

6. On May 20, 2002, a magnetic resonance image (MRI) of the Claimant's right shoulder showed that the shoulder was normal.
7. On August 2, 2002, the Provider performed a second decompression surgery on the Claimant's right shoulder to relieve pain in that shoulder.
8. Following that second surgery and adequate recovery time, the Claimant still complained of pain in his right shoulder.
9. On March 18, 2003, the Provider prescribed a third right-shoulder decompression surgery for the Claimant.
10. On March 26, 2003, the Provider requested pre-authorization from the Carrier for the third right-shoulder-decompression surgery.
11. On March 28, 2003, the Carrier denied the pre-authorization request.
12. On April 16, 2003, the Provider asked the Carrier to reconsider its denial of the pre-authorization request.
13. On April 22, 2003, the Carrier again denied the pre-authorization request.
14. After the Carrier twice denied pre-authorization, the Provider filed with TWCC a request for medical dispute resolution concerning that pre-authorization request.
15. On July 28, 2003, the IRO reviewed the medical dispute and found that the third right-shoulder decompression surgery was not medically necessary.
16. On August 26, 2003, October 7, 2003, and March 5, 2004, the Provider indicated in letters to the Carrier that he no longer believed that the Claimant needed further surgery on his right shoulder, although the Claimant continued to complain of pain there; however, the Provider wanted a second MRI to confirm his opinion.
17. No second MRI was ever performed.
18. After the IRO decision was issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ concerning the dispute.
19. The required notice of the contested-case hearing was given to the Claimant and the Carrier.
20. The Claimant twice asked that the hearing be continued to a later date and it was.

21. On May 11, 2004, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
22. The Carrier appeared at the hearing through its attorney, Tommy W. Lueders, II.
23. The Claimant appeared at the hearing by telephone.
24. TWCC Ombudsman Luz Loza appeared to assist the Claimant.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) ' ' 402.073(b) and 413.031(k) (West 2004) and TEX. GOV=T CODE ANN. (Gov=t Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov=t Code ' ' 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code ' 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) ' 155.41(b) (2004), and 28 TAC ' ' 133.308(v) and 148.21(h) (2004), the Claimant has the burden of proof in this case.
4. 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 that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Labor Code ' 408.021 (a).
5. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code ' 413.014
6. Pre-authorization is required for the requested surgery. 28 TAC ' 134.600(h)(1) and (2).
7. The evidence does not show that the Claimant needs a third decompression surgery on his right shoulder to relieve pain from his injury.
8. The third decompression surgery should be denied.

ORDER

IT IS ORDERED THAT the request for pre-authorization for a third decompression-surgery on the Claimant's right shoulder is denied.

SIGNED June 1, 2004.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**