

**SOAH DOCKET NO. 453-05-3138.M2  
TWCC MR NO. M2-05-0149-01**

—, <b>Petitioner</b>	:	<b>BEFORE THE STATE OFFICE</b>
	:	
<b>V.</b>	:	<b>OF</b>
	:	
—, <b>Respondent</b>	:	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

\_\_\_ (Claimant) challenges the decision of an Independent Review Organization (IRO) denying her request to preauthorize left shoulder arthroscopic surgery to remove possible loose cartilage. The Claimant’s employer at the time of her injury, \_\_\_ (the Carrier), is self insured under the workers’ compensation system and denied the claim as medically unnecessary. The IRO upheld that decision. This decision finds that the requested procedure should not be preauthorized.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Administrative Law Judge (ALJ) Kerry D. Sullivan held the hearing on this matter on August 16, 2005. The Claimant represented herself, with the assistance of Commission Ombudsman Anthony Walker. The Carrier was represented by W. Jon Grove. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law. The record closed on August 16, 2005.

**II. BASIS FOR DECISION**

The hearing record consists of the Claimant’s medical records, surveillance videos taken of the Claimant, and the testimony of the Claimant and of William Bundrick, M.D., the doctor who has proposed the requested arthroscopic procedure. This evidence shows that the Claimant suffered a compensable injury on \_\_\_, when she tripped and fell to the floor, spraining her ankle and hurting her back and left shoulder.

Dr. Bundrick examined the Claimant on May 11, 2004. He diagnosed her with a left shoulder sprain, right ankle sprain, and mild lumbosacral sprain. He injected the Claimant's shoulder with Zylocaine and cortisone and restricted her to light duty. The Claimant, however, reported that her pain persisted. She testified that she has been in a lot of pain since the accident and has also experienced muscle spasms. She stated that these symptoms prevent her from performing the heavy duty lifting of her previous job or even the requirements of light office work. She testified that she is unable, even, to enjoy a trip to the mall with her daughter because of the pain associated with her injury.

An MRI of the Claimant's left shoulder revealed no torn cartilage, but Dr. Bundrick testified this did not rule out small tears that an MRI might not pick up. In a July 30, 2004, examination, Dr. Bundrick found that the Claimant had a moderately reduced range of motion, tenderness, and "a popping and grinding sensation" in the area of her rotator cuff. According to Dr. Bundrick, these symptoms are reliable indicators of damage to the cartilage, and he believed arthroscopy would likely provide some mechanical improvement. Dr. Bundrick repeatedly acknowledged, however, that the procedure would not relieve all the Claimant's pain or give her a "new shoulder" in light of degenerative changes also present. He noted that the Claimant also has a previous history of rotator cuff surgery, which occurred in 1999.

In the ALJ's view, other cumulatively persuasive evidence militates against the medical necessity of the requested procedure. The surveillance video taken of the Claimant over the July 4, 2004 weekend shows her shopping and socializing over an extended period. The video shows the Claimant loading groceries, including a twenty pound bag of ice, into her truck; lifting a long light box to head height with both hands and maneuvering it into her truck; carrying a patio chair in her left hand; and giving a short piggyback ride to her teenage daughter. While none of this- with the exception of the piggyback ride-appeared to be particularly strenuous activity, the Claimant showed no signs of discomfort or a need to favor one arm over another throughout the two plus hours of the video.

While, standing alone, the video is not dispositive of the Claimant's condition, it does tend to indicate she has exaggerated her symptoms-her testimony at hearing that she could not stand to perform office work or to enjoy a trip to the mall seems inconsistent with her activities and demeanor on the video. Additionally, the TWCC-appointed designated doctor, a peer review doctor, and the IRO all found the Claimant's activities on the video to be inconsistent with the conduct of a person who needs shoulder surgery. While Dr. Bundrick disagreed with this assessment, he had not viewed the video and was, accordingly, at some disadvantage in addressing its implications.

In light of the activities shown on the surveillance video, the opinions of the designated doctor, the peer reviewer, and the IRO, and the negative results of the MRI, the ALJ finds that the Claimant has failed to establish the need for the requested operation. Accordingly, the petition is denied.

### **III. FINDINGS OF FACT**

1. The Claimant suffered a compensable injury on \_\_\_\_, when she tripped and fell to the floor, spraining her ankle and hurting her back and left shoulder.
2. At the time of the Claimant's injury, her employer, \_\_\_\_ ("the Carrier"), was self-insured for workers' compensation insurance coverage.
3. The Claimant requests preauthorization for arthroscopic surgery to her left shoulder in order to repair damaged cartilage.
4. The Carrier denied the request for preauthorization.
5. The Claimant requested medical dispute resolution at the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found that the requested operation was not medically necessary.
7. The Claimant timely requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the SOAH hearing was sent to the parties on January 19, 2005. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.

9. The hearing was continued three times to accommodate the schedules of the expert witnesses of the Petitioner and the Respondent and in order to obtain the IRO records. The hearing ultimately convened and closed on August 16, 2005. The Claimant and the Carrier appeared and participated in the hearing.
10. A surveillance video taken of the Claimant over the July 4, 2004 weekend shows her shopping and socializing over an extended period. The Claimant is shown loading groceries, including a twenty pound bag of ice, into her truck; lifting a long light box to head height with both hands and maneuvering it into her truck; carrying a patio chair in her left hand; and giving a short piggyback ride to her teenage daughter. The Claimant showed no signs of discomfort or a need to favor one arm over another throughout the two plus hours of the video.
11. The requested arthroscopic shoulder surgery has not been shown to be medically necessary. MRI results do not identify loose cartilage, and the Claimant appears to have exaggerated her symptoms.

#### **IV. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. As the Petitioner, the Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. The Claimant failed to establish that the requested arthroscopic shoulder surgery was medically necessary.
5. The requested preauthorization for arthroscopic shoulder surgery should be denied.

**ORDER**

**IT IS ORDERED** that the Claimant's request for preauthorization of arthroscopic shoulder surgery is denied.

**SIGNED September 12, 2005.**

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**KERRY D. SULLIVAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**