

MEDICAL CONTESTED CASE HEARING NO. 11111
M6-10-29977-01

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.

ISSUES

A contested case hearing was held on February 17, 2011 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 arthroscopy to the left shoulder for the compensable injury of _____?

Upon agreement of the parties, the following issue was added:

Did the Claimant timely file her appeal with the Division?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by CS, attorney.
Respondent/Carrier was represented by PM, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury to her left shoulder while stocking. As a result of the compensable injury, Claimant has undergone physical therapy, injections, medication and multiple Functional Capacity Evaluations. Claimant's treating physician has recommended arthroscopic surgery to the left shoulder. The request for the surgery was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, an orthopedic surgeon, concluded that the requested surgery did not meet the criteria as set out in the Official Disability Guidelines (ODG). The reviewer opined that the MRI and the physical findings noted in the medical records did not provide sufficient justification for the proposed surgery.

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."

The requesting physician did not provide sufficient information as to the specific type of surgery he is recommending for the Claimant and merely requested arthroscopic surgery to the left shoulder. Under the "arthroscopy" section of the *ODG*, it provides a definition of what an arthroscopic procedure is and refers the reader to either "surgery" or "diagnostic arthroscopy." The "surgery" section discusses specific surgical procedures such as surgery for a rotator cuff repair, impingement syndrome, AC joint separation, etc. None of these procedures were requested by the treating physician. The "diagnostic arthroscopy" section is the closest to the requested procedure by the treating physician and states as follows:

Recommended as indicated below. **Criteria** for diagnostic arthroscopy (shoulder arthroscopy for diagnostic purposes): Most orthopedic surgeons can generally determine the diagnosis through examination and imaging studies alone. Diagnostic arthroscopy should be limited to cases where imaging is inconclusive and acute pain or functional limitation continues despite conservative care. Shoulder arthroscopy should be performed in the outpatient setting. If a rotator cuff tear is shown to be present following a diagnostic arthroscopy, follow the guidelines for either a full or partial thickness rotator cuff tear. (Washington, 2002) (de Jager, 2004) (Kaplan, 2004).

Claimant failed to provide the opinion of a qualified expert, relying on evidence-based medicine, contrary to the determination of the IRO. Based on the evidence presented, the Claimant did not meet her burden to present evidence-based medical evidence contrary to the IRO's determination.

Rule 133.308(t)(1)(B)(i) provides that a written appeal of an IRO decision must be filed with the Division's Chief Clerk no later than 20 days after the date the IRO decision is sent to the appealing party and must be filed in compliance with Division rules. Claimant presented a post-marked envelope showing that it was mailed from (City), TX to the Claimant on October 12, 2010. The evidence established that Claimant filed her request with the Division's Chief Clerk of Proceedings on November 4, 2010, which is more than 20 days from receiving the IRO's decision.

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 _____, Claimant was the employee of (Self-Insured), Employer.
 - C. On _____, 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 that the requested services were not reasonable and necessary health care services for the compensable injury of _____.
4. Claimant failed to present evidence based medical evidence contrary to the IRO decision.
5. Arthroscopy to the left shoulder is not health care reasonably required for the compensable injury of _____.
6. The IRO's decision was mailed to the Claimant on October 12, 2010.
7. Claimant filed her appeal of the IRO's decision with the Division's Chief Clerk of Proceedings on November 4, 2010, which is more than 20 days from the date that the decision was mailed to her.

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 arthroscopy to the left shoulder is not healthcare reasonably required for the compensable injury of _____.
4. Claimant did not timely file her appeal with the Division.

DECISION

Claimant is not entitled to arthroscopy to the left shoulder for the compensable injury of _____. Claimant did not timely file her appeal with the Division.

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 **(SELF-INSURED)**, and the name and address of its registered agent for service of process is

(SELF-INSURED)
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 22nd day of February, 2011.

Teresa G. Hartley
Hearing Officer