

MEDICAL CONTESTED CASE HEARING NO. 18011

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. For the reasons discussed herein, the Administrative Law Judge determines that Claimant is not entitled to a left shoulder arthroscopy and manipulation under anesthesia.

STATEMENT OF THE CASE

A contested case hearing was held on January 24, 2018 and April 9, 2018, by a Division administrative law judge, Robin Burgess, to decide the following disputed issue:

Is the preponderance of the medical evidence contrary to the decision of the IRO that Claimant is not entitled to a left shoulder arthroscopy and manipulation under anesthesia?

PARTIES PRESENT

Claimant appeared and was assisted by RE, ombudsman. Carrier appeared and was represented by SC, attorney.

EVIDENCE PRESENTED

For Petitioner/Claimant: HG.

For Respondent/Carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits: ALJ-1 through ALJ-2.

Claimant's Exhibits: C-1 through C-9.

Carrier's Exhibits: CR-A through CR-K.

DISCUSSION

The record reflects that Claimant worked as a maintenance assistant and sustained injury when he was on a ladder changing a bulb when the step ladder moved, causing him to fall, hitting his chest, ribs and shoulders in the course and scope of his employment. The parties agree that Claimant sustained a compensable injury on (Date of Injury) in the form of a left shoulder dislocation, thorax contusion, cervical strain and left shoulder adhesive capsulitis.

Claimant underwent two surgeries on his left shoulder for his injuries. On March 23, 2017, Claimant underwent a left shoulder manipulation under anesthesia and lysis of adhesions. Dr. AP requested a second left shoulder arthroscopy and manipulation under anesthesia. This request was denied on July 12, 2017. On August 4, 2017, the denial of the requested procedure was affirmed. A request for review by an Independent Review Organization (IRO) was made on September 10, 2017. The IRO denied the requested treatment, which a reviewer upheld on October 10, 2017. A DWC Form-049 was filed on October 20, 2017.

The IRO reviewer relied on the Official Disability Guidelines (ODG), the AMA Guides to the Evaluation of Permanent Impairment, and on the reviewer's medical judgment, clinical experience and expertise in accordance with accepted medical standards. The reviewer found that the medical necessity of the requested treatment was not established. Claimant disagrees with the IRO decision that upheld Carrier's denial of a left shoulder arthroscopy and manipulation under anesthesia.

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."

Based on the outlined criteria, the IRO found that Claimant is not entitled to a left shoulder arthroscopy and manipulation under anesthesia. After a careful review of all of the evidence presented, Claimant has not shown that the preponderance of the evidence based medical evidence is contrary to the IRO 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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction in this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - D. On (Date of Injury), Employer provided worker's compensation insurance with Travelers Indemnity Company, Carrier.
 - E. On (Date of Injury), Claimant sustained a compensable injury in the form of a left shoulder dislocation, thorax contusion, cervical strain and left shoulder adhesive capsulitis.
 - F. The Independent Review Organization (IRO) determined that Claimant is not entitled to a left shoulder arthroscopy and manipulation under anesthesia.
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 Administrative Law Judge's Exhibit Number 2.
3. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to a left shoulder arthroscopy and manipulation under anesthesia.

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. Claimant has not shown that the preponderance of the evidence based medical evidence is contrary to the IRO decision.
4. A left shoulder arthroscopy and manipulation under anesthesia is not reasonably required for the compensable injury of (Date of Injury).

DECISION

The preponderance of the medical evidence is not contrary to the decision of the IRO that Claimant is not entitled to a left shoulder arthroscopy and manipulation under anesthesia.

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 **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, STE. 620
AUSTIN, TX 78701-3218**

Signed this 19th day of April, 2018.

Robin Burgess
Administrative Law Judge