

MEDICAL CONTESTED CASE HEARING NO. 18029

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Administrative Law Judge determines that Claimant is not entitled to right shoulder MRI for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On November 12, 2018, Mikhail Nagorny, an administrative law judge (ALJ), held a contested case hearing 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 right shoulder MRI for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by LB, ombudsman. Respondent/Carrier appeared and was represented by LM, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: GS, M.D.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1 through ALJ-4

Petitioner/Claimant's Exhibits: C-1 through C-10

Respondent/Carrier's Exhibits: CR-1 through CR-D

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), as a result of a slip and fall. Claimant testified that she landed on her bilateral hands and hurt her right shoulder, among other traumas accepted by Carrier.

The evidence shows that Claimant visited her treating doctor, DB, D.C., on February 9, 2018. Claimant testified that she had not been examined by Dr. B prior to that date since 2003. On February 9, 2018, Claimant complained of low back pain and right wrist pain. According to the visit note, “her [Claimant’s] neck and R shoulder had actually been doing pretty well.” During the next visit on April 9, 2018, Claimant complained of the right shoulder pain and significant difficulties with reaching and overhead reaching. Dr. B felt that Claimant “clinically has an impingement of the R shoulder and potentially a rotator cuff tear.”

On May 1, 2018, Dr. B submitted a request for approval of a right shoulder MRI. His working diagnosis at that time was a right shoulder sprain and impingement syndrome. On May 4, 2018, MediCall, Carrier’s utilization review agent, issued a denial of Dr. B’s MRI request. The denial was signed by GS, M.D., board-certified in occupational medicine. Dr. S explained the grounds for the denial and cited the Official Disability Guidelines (ODG) to support his conclusion.

Dr. B requested a reconsideration, and on May 24, 2018, MediCall issued a denial of the reconsideration request, which was signed by NA, D.C. The reviewer of the reconsideration request stated that “[b]ased of the medical information provided, there is not sufficient objective information to justify a right shoulder MRI for a (number) year old injury.” In reaching his conclusion, Dr. A also relied on the ODG.

On June 15, 2018, Claimant requested appointment of an IRO to contest Carrier’s denial of the right shoulder MRI request. The Texas Department of Insurance appointed Clear Resolutions, Inc., to act as an IRO. On July 9, 2018, the IRO issued a notice of its review decision and upheld the previous adverse determination. The IRO reviewer, identified as “Board Certified Chiropractor,” determined that the requested procedure was not medically necessary. The IRO reviewer noted that, according to the ODG, medical necessity for the right shoulder MRI had not been sufficiently established.

In support of her position, Claimant relied on her testimony and medical records from Dr. B. Carrier relied on the IRO decision and testimony of Dr. S. The expert witness provided his opinion with regard to Claimant’s medical history, review of records, and sufficiency of medical evidence to justify necessity of a repeat right shoulder MRI. Dr. S concurred with Dr. A and with the IRO reviewer in that a repeat right shoulder MRI was not medically necessary.

Texas Labor Code § 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 § 401.011(22-a) 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, 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 § 401.011(18-a) 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. *See* Texas Labor Code § 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 § 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 division 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.

ODG Criteria for Shoulder MRI: Acute shoulder trauma, suspect rotator cuff tear/impingement; over age 40; normal plain radiographs. Subacute shoulder pain, suspect instability/labral tear. Repeat MRI is not routinely recommended and should be reserved for a significant change in symptoms and/or findings suggestive of significant pathology.

Based on the evidence presented, Claimant does not meet the requirements in the ODG for the requested right shoulder MRI, and she failed to present evidence sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to right shoulder MRI for the compensable injury of (Date of Injury).

The ALJ considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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 was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation coverage with Indemnity Insurance Company of North America, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. Clear Resolutions, Inc., was appointed to act as IRO by the Texas Department of Insurance.
 - F. On July 9, 2018, the IRO determined that the proposed right shoulder MRI was not medically necessary for the compensable injury of (Date of 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 ALJ's Exhibit Number 2.
3. Claimant does not meet the recommendations of the ODG for right shoulder MRI, and Claimant failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
4. Right shoulder MRI 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 IRO that right shoulder MRI is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to right shoulder MRI for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the medical benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code § 408.021.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA**, and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TX 75201-3136**

Signed this 12th day of November 2018.

Mikhail Nagorny
Administrative Law Judge