

MEDICAL CONTESTED CASE HEARING NO. 20013

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 the left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On September 1, 2020, Amanda Barlow, a Division administrative law judge, held a medical 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 the Claimant is not entitled to the left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV for the compensable injury of (Date of Injury)?

PARTIES PRESENT

The hearing was held by teleconference due to the COVID-19 pandemic. Petitioner/Claimant's appearance was waived, but he was represented by FC, attorney. Respondent/Carrier appeared and was represented by PW, attorney.

EVIDENCE PRESENTED

No witnesses testified.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 and ALJ-2.

Petitioner/Claimant's Exhibits C-1 through C-7.

Respondent/Carrier's Exhibits CR-A through CR-E.

BACKGROUND INFORMATION

On (Date of Injury), Claimant sustained a compensable injury in the nature of a left shoulder rotator cuff tear. On May 8, 2020, Dr. RK requested authorization to perform the left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV. The request was

denied as not being medically necessary. It was first denied through Utilization Review and then denied by an IRO.

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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to rotator cuff repair:

ODG Indications for Surgery™ --Rotator cuff repair:

Criteria for rotator cuff repair with diagnosis of *moderate to large full-thickness* rotator cuff tear AND cervical pathology and frozen shoulder syndrome have been ruled out:

- 1. Subjective Clinical Findings:** Shoulder pain and inability to elevate the arm; tenderness over the greater tuberosity is common in acute cases. PLUS
- 2. Objective Clinical Findings:** Weakness with abduction/external rotation testing. May also have atrophy of shoulder musculature. Should have full passive range of motion. PLUS
- 3. Imaging Clinical Findings:** Conventional x-rays, AP, and true lateral or axillary views AND MRI, ultrasound, or arthrogram shows positive evidence of deficit in rotator cuff *without significant fatty infiltration* (atrophy).

In this case, a physician board-certified in orthopedic surgery reviewed the case. That doctor determined that the adverse determination should be upheld. The IRO doctor noted that Claimant fatty infiltration visible on the MRI scan, did not have documented full passive range of motion, and had significant retraction. Therefore, the requested procedure was not medically necessary, appropriate, or supported by the evidence-based Official Disability Guidelines (ODG).

Dr. K responded to the denials with his reasons why he believed the procedure was medically necessary. Dr. K states that conservative care is optional, that Claimant had shoulder pain, an inability to raise his arm, weakness in abduction on external rotation, and full passive range of motion. Dr. K stated passive range of motion was well past 100 degrees and he only stopped so that he would not cause Claimant further pain, but he failed to state a specific measurement. Dr. K also discussed that there was some fatty atrophy of the supraspinatus belly, but it was not significant. Dr. K contends the requirements of the ODG were satisfied but misinterpreted by the reviewing physicians. It is difficult to agree with Dr. K when he did not specifically state there was full passive range of motion in the medical records and gave exact no measurement for an objective determination. After review, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to the left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV.

The Administrative Law Judge 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 insurance with Sentinel Insurance Company LTD, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury in the nature of a left shoulder rotator cuff tear.
 - E. The Independent Review Organization determined Claimant should not have the left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV.
- 2. Carrier delivered to Claimant's attorney 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 a Carrier Exhibit.
 - 3. The left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV 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 the left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to the left shoulder arthroscopy and rotator cuff repair with Ancef 1gm/Clindamycin 800 mg IV for the compensable injury of (Date of Injury).

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 Section 408.021.

The true corporate name of the insurance carrier is **SENTINEL INSURANCE COMPANY LTD**, and the name and address of its registered agent for service of process is:

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

Signed this 9th day of September, 2020.

AMANDA BARLOW
Administrative Law Judge