

MEDICAL CONTESTED CASE HEARING 21003

DECISION

Claimant appealed the decision of the Independent Review Organization in Case Number 299348. The hearing for this appeal was held on January 13, 2021. For the reasons discussed below, the administrative law judge (ALJ) decides:

Claimant is entitled to physical therapy right shoulder, 12 visits for the compensable injury of (Date of Injury).

Issue

At the hearing, Hector Q. Martinez, an ALJ, considered the following unresolved issue:

Is the claimant entitled to physical therapy (PT) right shoulder, 12 visits for the compensable injury of (Date of Injury)?

Persons Present

Claimant appeared and was assisted by JP, ombudsman. Insurance Carrier appeared and was represented by MD, attorney. KW appeared for (Self-Insured). AG appeared for (Employer). DE, M.D., appeared for (Health Care Provider).

Evidence Presented

The following witnesses testified:

For Claimant: Claimant

For the health care provider: DE, M.D.

For Insurance Carrier: None

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibits: ALJ-1 through ALJ-3

Claimant Exhibits: None

Health care provider exhibits: None

Insurance Carrier Exhibits: CR-A through CR-D

Discussion

Claimant sustained a compensable injury on (Date of Injury), while working for the (Employer). Claimant testified that he was chasing a fleeing subject and they fell into a drainage ditch/culvert. The compensable injury includes at least a right shoulder dislocation with fractured glenoid, full thickness retracted tears involving the supraspinatus and infraspinatus tendons, fracture of orbital floor blow-out (left), nasal fracture, closed head injury, avulsion fracture of the left triquetrum, cervical strain, and lumbar strain.

Claimant treated with DE, M.D., who recommended the disputed treatment. Preauthorization from Insurance Carrier's utilization review agent was requested and denied, notification date September 22, 2020. (Health Care Provider), health care provider, then requested an independent review organization (IRO) review of the denial on September 23, 2020. In the decision letter dated October 19, 2020, the IRO upheld and agreed with Insurance Carrier's denials, but the IRO decision was appealed.

To determine if treatment is medically necessary, Texas law requires DWC to use treatment guidelines. These guidelines must be evidence-based, scientifically valid, and outcome-focused. Use of these guidelines ensures that an injured employee will receive reasonable and necessary health care. (See Texas Labor Code §413.011(e) and 413.017(1)). DWC uses the current edition of the *Official Disability Guidelines (ODG)*. If the *ODG* does not address the requested treatment, then other guidelines or generally accepted standards of practice recognized in the medical community are used.

Claimant relied on his testimony, the medical records in evidence, and the opinion of DE, M.D., the doctor who performed his surgery and recommended the physical therapy (PT), to support entitlement to the disputed treatment. Insurance Carrier relied on the medical records in evidence and the IRO decision, to support its position that Claimant is not entitled to the requested treatment.

Dr. E testified in detail regarding Claimant's injury. Insurance Carrier noted the number of PT appointments exceeded the ODG recommendations and that Claimant was able to do home exercises. Dr. E explained why Claimant's shoulder injury went beyond the injury referenced or addressed by the ODG, that the injury was not only a massive right rotator cuff tear but also a dislocation of the right shoulder. Dr. E explained why the two injuries would require treatment beyond what the ODG noted for a massive rotator cuff tear only. Dr. E detailed the additional treatment Claimant would be provided in-person, which would not be available to Claimant at home. The number of PT sessions pre-surgery and post-surgery versus the number recommended by the ODG for a massive rotator cuff injury only was also considered.

In summary, the evidence offered, including the opinion of Dr. E, provided a persuasive explanation of how the disputed treatment is necessary in comparison to evidence-based medicine, such as the ODG. While the ODG addressed the necessity of the disputed treatment, Dr. E explained the specific damage that occurred to Claimant and why such damage made it necessary for additional treatment to be provided, which included treatment in excess of the ODG recommended PT sessions. Therefore, the preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to physical therapy right shoulder, 12 visits.

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

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), the claimant was the employee of (Self-Insured), Employer.
 - C. On (Date of Injury), the employer provided workers' compensation insurance as a self-insured, Insurance Carrier.
 - D. On (Date of Injury), the claimant sustained a compensable injury.
 - E. The requested treatment is for the (Date of Injury), compensable injury that includes at least a right shoulder dislocation with fractured glenoid, full thickness retracted tears involving the supraspinatus and infraspinatus tendons, fracture of orbital floor blow out (left), nasal fracture, closed head injury, avulsion fracture of the left triquetrum, cervical strain, and lumbar strain.
 - F. The Independent Review Organization decision upheld and agreed with the insurance carrier's denials of physical therapy right shoulder, 12 visits for the compensable injury of (Date of Injury).
 - G. The Independent Review Organization decision was sent to the parties on October 19, 2020.
 - H. On October 27, 2020, the health care provider filed this appeal of the Independent Review Organization decision (DWC049) with the Division of Workers' Compensation. The appeal was filed within twenty days from the date the Independent Review Organization decision was sent to the parties.

2. Insurance Carrier delivered to the claimant and the health care provider a document stating the insurance carrier's true corporate name and the registered agent's name. This document was admitted into evidence as an Insurance Carrier's Exhibit.
3. Claimant's shoulder injury went beyond the injury referenced or addressed by the ODG, as the injury was not only a massive right rotator cuff tear but also a dislocation of the right shoulder.
4. Claimant's in-facility treatment was of a type not available to Claimant at home.
5. The ODG is not on point in this case, no other evidence-based medicine is on point, and the proposed care meets the generally accepted standards of medical practice recognized in the medical community.
6. The preponderance of the evidence-based medical evidence is contrary to the decision of the Independent Review Organization that Claimant is not entitled to physical therapy right shoulder, 12 visits 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 of the Texas Department of Insurance, Division of Workers' Compensation.
3. Claimant is entitled to physical therapy right shoulder, 12 visits for the compensable injury of (Date of Injury).

Decision

Claimant is entitled to physical therapy right shoulder, 12 visits for the compensable injury of (Date of Injury).

Order

Insurance Carrier is liable for the benefits in dispute 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 **(Self-Insured) (SELF-INSURED)**. The name and address of its registered agent for service of process is:

(NAME)
(ADDRESS)
(CITY, STATE, ZIPCODE)

Signed this 25th day of January 2021.

Hector Q. Martinez
Administrative Law Judge