

MEDICAL CONTESTED CASE HEARING 21005

DECISION

This case is decided pursuant to 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 the following:

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that a left total shoulder arthroplasty (same day admit) is not health care reasonably required for the compensable injury of (Date of Injury).

ISSUE

A contested case hearing was held on March 17, 2021, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a left total shoulder arthroplasty (same day admit) is not health care reasonably required for the compensable injury of (Date of Injury)?

PERSONS PRESENT

The claimant appeared and was assisted by DS, ombudsman. The insurance carrier appeared and was represented by WM, attorney. The hearing was held by teleconference in accordance with Commissioner Cassie Brown’s March 24, 2020, memo to system participants regarding workers’ compensation operations in light of COVID-19.

EVIDENCE PRESENTED

The following witnesses testified:

For the claimant: The claimant

For the insurance carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibit: ALJ-1.
The claimant’s exhibits: C-1 through C-4.
The insurance carrier’s exhibits: CR-A through CR-F.
 (CR-C, p.5 is the same as C-2, p.5)

DISCUSSION

The claimant sustained a compensable injury on (Date of Injury), when he was involved in a motor vehicle accident. The compensable injury includes at least an injury to the left shoulder.

On February 20, 2020, treating doctor, Dr. BB, requested a left total shoulder arthroplasty (same day admit) for treatment of left shoulder post-traumatic degenerative joint disease and a left shoulder SLAP lesion. Preauthorization from the insurance carrier's utilization review agent was requested and denied.

The claimant then requested an IRO review of the denial. In the decision letter dated September 15, 2020, the IRO upheld the insurance carrier's denial. The claimant is now appealing the IRO decision.

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 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.

In this dispute, the claimant has the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong. The claimant relied on his testimony and the medical records in evidence to support his position of entitlement to the disputed treatment. The insurance carrier relied on the medical records and the IRO decision in evidence to support its position that the claimant is not entitled to the requested medical services.

On July 6, 2020, Dr. AF, a peer reviewer for the insurance carrier's utilization review agent, stated that the disputed treatment is not medically necessary. According to Dr. F, it was noted that this claimant had a morbidly endomorphic body habitus and was 66 inches and 279 pounds. Per *ODG* guidelines, indications for surgery include Body Mass Index (BMI) < 40, with documented significant weight loss effort for BMI > 35. There was no documentation of weight loss efforts. Dr. F stated, therefore, the proposed treatment consisting of a left shoulder arthroplasty (same day admit) is not medically necessary.

On July 28, 2020, Dr. SL, another peer reviewer for the insurance carrier's utilization review agent, reviewed the record. Dr. L concurred with Dr. F and stated that the proposed treatment is not medically necessary for Claimant's diagnosis and clinical findings. Dr. L noted that the claimant reported left shoulder clicking and popping. Additionally, the shoulder is adversely affecting activities of daily living. Dr. L stated that the *ODG* requires BMI < 40, with documented significant weight loss effort for BMI > 35. According to Dr. L, the claimant has

posttraumatic arthritis of left shoulder, however, his BMI is 51.03 which exceeds guidelines, and there is no documentation of weight loss effort. Therefore, medical necessity has not been established.

According to the IRO reviewer, a board-certified orthopedic surgeon, the prospective request for a left total shoulder arthroplasty is not medically necessary. The denial is upheld. The *ODG* recommends shoulder arthroplasty after at least six months of conservative treatment for patients meeting the appropriate criteria. The *ODG* indications for surgery include glenohumeral joint osteoarthritis with all the following: disabling pain (preventing sleep) or functional disability that interferes with activities of daily living or work; and positive radiographic findings (e.g., shoulder joint destruction, severe joint space narrowing, or cystic changes); and nonoperative therapy (e.g., anti-inflammatory medications, physical therapy, and analgesics) has been tried and failed for at least six months; and BMI < 40, with documented significant weight loss effort for BMI > 35.

The IRO reviewer further noted that the claimant presents with chronic left shoulder pain with regular popping and clicking. Functional limitations affect activities of daily living and preclude return-to-work. Clinical exam findings are consistent with radiographic evidence of severe glenohumeral joint degenerative joint disease, bone-on-bone. The claimant has failed to improve despite long-term conservative treatment including activity modification, NSAIDs, injection, physical therapy, and work conditioning. However, the IRO reviewer noted that *ODG* criteria have not been fully met.

The claimant is reported with a morbidly endomorphic body habitus. His BMI has increased over four months, February 20, 2020, to June 29, 2020, from 45.19 to 51.03, a 36-pound weight gain. The IRO reviewer stated that there is a documented discussion on July 21, 2020, by the provider regarding the claimant's increased BMI and a recommendation for weight loss. However, there is no evidence of an actual significant weight loss effort. The IRO reviewer stated that there is no compelling rationale presented or extenuating circumstances noted to support the medical necessity of this request as an exception to guidelines. Therefore, this request for a left total shoulder arthroplasty is not medically necessary.

In his November 3, 2020, letter, Dr. B opined that with the exception of the BMI requirement, Claimant meets all of the *ODG* criteria for the requested procedure. According to Dr. B, it would be reasonable to allow the procedure to help reduce the claimant's pain and increase his function. Also, Dr. B opined that increased activity after the shoulder arthroplasty would lead to a decrease in BMI post-operatively.

In summary, the evidence offered, does not provide a persuasive explanation using evidence-based medicine of how the disputed treatment is necessary.

The ODG does not support the necessity of the disputed treatment and the generally accepted standards of practice recognized in the medical community do not support the necessity of the disputed treatment. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that a left total shoulder arthroplasty (same day admit) is not health care medically necessary for the compensable injury of (Date of Injury).

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 (Employer), Employer.
 - C. On (Date of Injury), the employer provided workers' compensation insurance with Zurich American Insurance Company, the insurance carrier.
 - D. On (Date of Injury), the claimant sustained a compensable injury.
 - E. The (Date of Injury), compensable injury includes at least injury to the left shoulder.
 - F. The Independent Review Organization decision upheld the insurance carrier's denial of a left total shoulder arthroplasty (same day admit).
 - G. The Independent Review Organization decision was sent to the parties on September 15, 2020.
2. The insurance carrier delivered to the claimant a document stating the insurance carrier's true corporate name and the registered agent's name. This document was admitted into evidence as the insurance carrier's exhibit CR-B.
3. On September 23, 2020, the claimant filed this appeal of the Independent Review Organization decision 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.
4. The decision of the Independent Review Organization has not become final because the Division of Workers' Compensation timely received the request for appeal.

5. The preponderance of the evidence-based medical evidence does not support that a left total shoulder arthroplasty (same day admit) is medically necessary 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. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that a left total shoulder arthroplasty (same day admit) is not health care reasonably required for the compensable injury of (Date of Injury).

ORDER

The insurance carrier is not liable for the benefits in dispute in this hearing. The 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 **ZURICH AMERICAN INSURANCE COMPANY**. The name and address of its registered agent for service of process is:

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

Signed on the 20th day of March, 2021.

Early Moye
Administrative Law Judge