

MEDICAL CONTESTED CASE HEARING 21009

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 (DWC). For the reasons discussed herein, the Administrative Law Judge determines that the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace for the compensable injury of (Date of Injury).

ISSUE

A contested case hearing was held on May 27, 2021, with the record closing on June 2, 2021, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace for the compensable injury of (Date of Injury)? *(As revised by agreement of the parties)*

PERSONS PRESENT

The medical contested case hearing was held by teleconference due to the COVID-19 pandemic. Claimant appeared and was assisted by LI, ombudsman. Insurance Carrier appeared and was represented by BJ, attorney.

EVIDENCE PRESENTED

Witnesses for Claimant: Claimant

Witnesses for Insurance Carrier: BS, M.D.

The following exhibits were admitted into evidence:

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

Claimant's Exhibits: CL-1 through CL-5

Insurance Carrier's Exhibits: CR-A through CR-H

Insurance Carrier's Exhibit list did not include the number of pages contained in Exhibit F. However, Insurance Carrier confirmed that there were eight pages in the actual Exhibit F.

DISCUSSION

The record was re-opened in this case to obtain a revised stipulation from the parties. The additional stipulation and responses from the parties were admitted as Administrative Law Judge's Exhibit 2 without objections from the parties.

The parties stipulated that Claimant sustained a compensable injury on (Date of Injury). The parties further stipulated that the compensable injury extends to and includes at least a right shoulder strain, right shoulder rotator cuff tear, and right shoulder impingement.

Claimant treated with orthopedic surgeon, CB, M.D., who recommended the disputed treatment for Claimant's compensable injury. Preauthorization from the Insurance Carrier's utilization review agent was requested and denied. An Independent Review Organization (IRO) assessment was requested. Applied Independent Review was appointed to act as IRO by the Texas Department of Insurance. An orthopedic surgeon was the reviewer through Applied Independent Review. The IRO upheld the Insurance Carrier's denial of the requested surgery as medical necessity had not been established without documentation showing clear failure of non-operative measures.

The decision of the IRO was sent to the parties on February 18, 2021. On March 9, 2021, Claimant filed the appeal of the decision with DWC. This date is less than twenty days after the decision was sent to the parties.

To determine if treatment is medically necessary, Texas law requires that DWC 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.

On the date of this medical contested case hearing, the *ODG* provides the following guidance with regard to the requested surgery in dispute: conservative care is recommended for at least six months with exercise directed toward gaining full range of motion with both stretching and strengthening to balance muscles. Subjective clinical findings include shoulder pain and inability to elevate the arm. Objective clinical findings include weakness with abduction/external rotation testing, may also have atrophy of shoulder musculature, and full passive range of motion. Imaging clinical findings include x-rays, MRI, ultrasound, or arthrogram. Criteria also includes no shoulder injections six months prior to surgery.

In this dispute, Claimant has the burden of showing by a preponderance of the medical evidence that the IRO determination is wrong.

Claimant relied on his testimony and the medical records offered from his treating physician, Dr. B, to support his position of entitlement to the disputed treatment. Claimant testified that he was provided with conservative medical treatment and had performed physical therapy and had a Medrol Dosepak which was consistent with injections. Claimant noted that conservative medical treatment failed. Claimant did not provide a persuasive opinion from his treating physician in support of his position.

Insurance Carrier presented the testimony of BS, M.D. Dr. S explained the different surgical procedures and post-operative medical braces requested by Claimant's physician. Dr. S explained the criteria outlined under the *ODG*. He persuasively explained that Claimant had not met the criteria as outlined by the *ODG*. Specifically, he noted that there had not been six months of conservative medical care provided, and that there was a lack of documentation of the conservative measures taken in the treatment provided. He further explained that Claimant did not meet the criteria outlined in the *ODG*.

Based on the evidence presented, Claimant failed to provide a persuasive explanation using evidence-based medicine of how the disputed treatment meets the *ODG* requirements. Claimant failed to provide an evidence-based medical opinion 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 arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace for the compensable injury of (Date of Injury).

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 employed by (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation coverage with Texas Mutual Insurance Company.
 - D. On (Date of Injury), Claimant sustained a compensable injury.

- E. The requested treatment is for the (Date of Injury), compensable injury that includes at least a right shoulder strain, right shoulder rotator cuff tear, and right shoulder impingement.
 - F. The IRO upheld Insurance Carrier's denial of right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace.
 - G. The IRO decision was sent to the parties on February 18, 2021.
 - H. On March 9, 2021, Claimant filed this appeal of the IRO decision with DWC. This date is less than twenty days after the decision was sent to the parties.
2. Insurance Carrier delivered to Claimant a document stating the insurance carrier's true corporate name and the registered agent's name and street address. This document was admitted into evidence.
 3. Applied Independent Review was appointed to act as IRO by the Texas Department of Insurance.
 4. The IRO determined that the Claimant was not entitled to right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace.
 5. Claimant failed to provide sufficient evidence-based medical evidence in support of the necessity for the procedures of right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 Claimant is not entitled to right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff repair, biceps grooveplasty, polar care cube for right shoulder, a right shoulder post-operative brace for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**RICHARD J. GERGASKO
TEXAS MUTUAL INSURANCE COMPANY
2200 ALDRICH STREET
AUSTIN, TEXAS 78723**

Signed this 2nd day of June, 2021.

Alice Orta
Administrative Law Judge