

MEDICAL CONTESTED CASE HEARING 22006

**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 (ALJ) determines that:

Claimant is entitled to manipulation under anesthesia and capsular release for the compensable injury of (Date of Injury).

Claimant is not entitled to left shoulder arthroscopic biceps tenodesis, distal clavicle resection, or subacromial decompression for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

A contested case hearing was held on March 28, 2022, 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 left shoulder arthroscopy biceps tenodesis, distal clavicle resection, and subacromial decompression for the compensable injury of (Date of Injury)?

The portion of the IRO report determining that Claimant is entitled to manipulation under anesthesia and arthroscopic capsular release was not appealed.

**PERSONS PRESENT**

Claimant appeared and was assisted by EM, ombudsman. Insurance Carrier appeared and was represented by CE, attorney.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: None.

The following exhibits were admitted into evidence:

ALJ's Exhibit: ALJ-1.

Claimant's Exhibits: C-1 through C-12. (372 PDF pages)

Insurance Carrier's Exhibits: CR-A through CR-G. (51 PDF pages)

The parties affirmed on the record that, despite any possible misnumbering or mislabeling of their respective exhibits, the PDF pages noted next to the exhibits admitted are correct.

## DISCUSSION

Claimant is a (age)-year-old former heavy equipment operator for Employer of one-year tenure. On (Date of Injury), she was climbing a metal stair when her foot slipped, and she fell catching herself with her arms. The Insurance Carrier accepted as compensable a left shoulder sprain. Claimant had conservative treatment initially, and underwent surgery with MS, M.D., on July 17, 2020, for left shoulder arthroscopy, debridement, acromioplasty, subacromial decompression, and distal clavicle resection. Post-surgically, Claimant had left shoulder injections, and physical and occupational therapy with the (Healthcare Provider). Dr. S(1) has proposed additional surgery in the form of left shoulder arthroscopic biceps tenodesis, distal clavicle resection, subacromial decompression, manipulation under anesthesia, and capsular release for the compensable injury of (Date of Injury). Insurance Carrier denied the requested surgery, and the denial was reviewed by an orthopedic surgeon with the IRO, who partially overturned the denial by certifying that the proposed manipulation under anesthesia and arthroscopic capsular release are medically necessary for treatment of the compensable injury, but the arthroscopic biceps tenodesis, distal clavicle resection, and subacromial decompression are not medically necessary treatment for the compensable injury. Claimant appealed the denial of the requested procedures. Insurance Carrier did not dispute the portion of the decision that overturned the denial of the manipulation under anesthesia and arthroscopic capsular release.

In accordance with statutory guidance, the DWC has adopted treatment guidelines by DWC 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. 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, 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.

The IRO reviewer indicated that the review was based upon the ODG as well as medical judgment, clinical experience, and expertise in accordance with accepted medical standards. In this regard, it was stated in the IRO report that there was no documentation of impingement on imaging or examination to support a subacromial decompression. The proposed distal clavicle excision would not be supported according to the report as there was no evidence of AC joint

arthritis/hypertrophy on imaging. The proposed biceps tenodesis was not supported by documentation of labral or biceps pathology on imaging.

Dr. S(2), the surgeon, provided letters indicating his opinion that Claimant may have biceps problems causing inflammation that contributes to the adhesive capsulitis and may have residual subacromial bursitis also as a result of persistent inflammation. Dr. S(2) did not address the sections of the IRO report explaining lack of proof of medical necessity for each disputed condition. The ODG relating to biceps tenodesis, requires a history, physical examination, and imaging indicative of significant biceps or labral pathology, and a failure of conservative treatment. The ODG relating to distal clavicle resection requires evidence of symptomatic AC arthritis after a failure of conservative treatment. The distal clavicle was resected in the original surgery on July 17, 2020. With regard to subacromial decompression, the ODG requires documentation of mechanical impingement after a failure of one year of conservative care unless earlier surgical criteria are met. Because the preponderance of the evidence-based medical evidence in this case is not contrary to the decision of the IRO, Claimant did not meet her burden to overcome the portion of the IRO decision she has disputed.

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, DWC.
  - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation coverage through Liberty Insurance Corporation, Insurance Carrier.
  - D. Claimant sustained a compensable injury on (Date of Injury), in the form of at least the Insurance Carrier-accepted condition of left shoulder sprain.
  - E. Claimant's injury is not covered under a workers' compensation healthcare network.
  - F. The IRO determined that Claimant is not entitled to left shoulder arthroscopic biceps tenodesis, distal clavicle resection, and subacromial decompression for the compensable injury of (Date of Injury).
  - G. The IRO determined that Claimant is entitled to manipulation under anesthesia and arthroscopic capsular release for the compensable injury of (Date of Injury).

2. Insurance Carrier delivered to Claimant a single document stating the true corporate name of Insurance Carrier, and the name and street address of Insurance Carrier's registered agent, which document was admitted into evidence as Insurance Carrier's Exhibit CR-B.
3. The preponderance of the evidence-based medical evidence is not contrary to the decision of the IRO that left shoulder arthroscopic biceps tenodesis, distal clavicle resection, and subacromial decompression, is not health care reasonably required for the compensable injury of (Date of Injury)
4. The decision of the IRO that Claimant is entitled to manipulation under anesthesia and arthroscopic capsular release was not disputed by Insurance Carrier in this case.

### **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, DWC, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. Claimant is entitled to manipulation under anesthesia and capsular release for the compensable injury of (Date of Injury).
4. Claimant is not entitled to left shoulder arthroscopic biceps tenodesis, distal clavicle resection, or subacromial decompression for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is entitled to manipulation under anesthesia and capsular release for the compensable injury of (Date of Injury). Claimant is not entitled to left shoulder arthroscopic biceps tenodesis, distal clavicle resection, or subacromial decompression for the compensable injury of (Date of Injury).

**ORDER**

Insurance Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION**, and 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 this 29th day of March, 2022.

Warren E. Hancock, Jr.  
Administrative Law Judge