

MEDICAL CONTESTED CASE HEARING NO 22011

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) determined that the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to left shoulder rotator cuff repair and left shoulder arc sling.

STATEMENT OF THE CASE

On July 28, 2022, Kevin L. Henry, a DWC ALJ, held a contested case hearing 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 left shoulder rotator cuff repair and left shoulder arc sling for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Although notified of the time date and place of this hearing, Claimant failed to appear, and Petitioner, the medical provider, failed to appear. Insurance Carrier/Respondent appeared and was represented by CL, attorney.

EVIDENCE PRESENTED

No witnesses testified.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1 through ALJ-3.

Claimant's Exhibits: None.

Petitioner's Exhibits: None

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

DISCUSSION

Although properly notified, Claimant and Petitioner failed to appear for the CCH scheduled for 10:30 a.m. on July 28, 2022. A 10-day letter was sent to Claimant and Petitioner as required by DWC Rule 142.11(a), advising them that the hearing had convened, that the record was opened and developed, and that the record would be held open for 10 days after receipt of the letter to afford Claimant and Petitioner the opportunity to respond in writing, show good cause for their failure to appear at the hearing, and request that the hearing be rescheduled to permit them to present evidence on the disputed issue. (ALJ-2 and ALJ-3). Neither Claimant nor Petitioner responded in writing to the 10-day letter and did not state good cause for their absence or request a reset of the CCH. The record was closed on August 23, 2022

The evidence showed that Claimant sustained a compensable injury on (Date of Injury). The evidence further showed that Claimant sustained an injury while pushing a vehicle hood with his left arm to avoid being hit by the hood. The evidence also showed that Claimant had two previous rotator cuff repairs, more that is recommended by the Official Disability Guidelines (ODG). Claimant did not satisfy the criteria for another left shoulder rotator cuff repair. Since immobilization is recommended for post reconstructive surgery conditions, the arc sling is not certified for this case, as well. The IRO reviewer upheld the previous denials, and Petitioner appealed by requesting a medical contested case hearing.

In order for Claimant/Petitioner to meet their burden, they had to present a qualified expert medical opinion with reference to evidence-based medicine to show the preponderance of the evidence- based medical evidence is contrary to the decision issued by the IRO. Such evidence-based medical evidence was lacking in this case. As such, insufficient evidence-based medical evidence existed to explain that the requested left shoulder rotator cuff repair and left shoulder arc sling was health care reasonably required for the compensable injury. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner are not entitled to the requested treatment.

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 Insurance Carrier/Respondent admitted to the following facts:
 - A. The Texas Department of Insurance, DWC has jurisdiction to hear this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, DWC.
 - C. On (Date of Injury), Claimant was an employee of (Employer), Employer.
 - D. On (Date of Injury), Employer provided workers' compensation insurance coverage with The Travelers Indemnity Company, Insurance Carrier.
 - E. On (Date of Injury), Claimant sustained a compensable injury.
 - F. The IRO determined that Claimant is not entitled to left rotator cuff repair and left shoulder arc sling for the compensable injury of (Date of Injury).
2. DWC sent a single document stating the true corporate name of Insurance Carrier/Respondent and the name and street address of Insurance Carrier/Respondent's registered agent for service with the 10-day letter to Claimant and to Petitioner, at Claimant's and Petitioner's addresses of record. The documents were admitted into evidence as an Insurance Carrier's exhibit.
3. Claimant failed to appear for the July 28, 2022, contested case hearing and did not respond in writing to DWC's letter offering him the opportunity to have the hearing rescheduled.
4. Claimant did not show good cause for failing to appear at the July 28, 2022, contested case hearing.
5. Petitioner failed to appear for the July 28, 2022, contested case hearing and did not respond in writing to DWC's letter offering him the opportunity to have the hearing rescheduled.
6. Petitioner did not show good cause for failing to appear at the July 28, 2022, contested case hearing.

7. Left shoulder rotator cuff repair and left shoulder arc sling are not health care reasonably and necessarily required for the compensable injury of (Date of Injury).

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. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to left shoulder rotator cuff repair and left shoulder arc sling 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 left shoulder rotator cuff repair and left shoulder arc sling for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier/Respondent is not liable for the benefits at issue 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 Insurance Carrier is **THE TRAVELERS INDEMNITY COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218**

Signed this 30th day of August 2022.

Kevin L. Henry
Administrative Law Judge