

MEDICAL CONTESTED CASE HEARING 16062

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. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to left shoulder arthroscopy and post-operative physical therapy for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On February 22, 2017, Amanda Barlow, a Division hearing officer, held a medical contested case hearing 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 and post-operative physical therapy for the compensable injury of (Date of Injury)?

The record was reopened so that a stipulation could be added. The record closed on March 1, 2017, with no objection from either party to the stipulation. The emails between the parties and the hearing officer became the next hearing officer exhibit.

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by ER, attorney.

Respondent/Carrier appeared and was represented by BJ, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Petitioner/Claimant: None.

For Respondent/Carrier: BS, M.D.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-4.

Petitioner/Claimant's Exhibits C-1 through C-4.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury) when he slipped on some oil on the floor and landed on his left shoulder. On February 5, 2016, Claimant underwent rotator cuff surgery to repair a torn infraspinatus and supraspinatus tendon. On June 30, 2016, Claimant's treating doctor, BP, M.D., requested authorization for left shoulder arthroscopic surgery, which would include a revision of rotator cuff repair, sub-acromial decompression (SAD procedure), and a distal clavicle resection (Mumford procedure), along with post-operative physical therapy.

Carrier denied the request by Dr. P and Claimant asked for reconsideration in a process called Utilization Review. The requested procedure was again denied and Claimant sought review by an IRO. The IRO reviewer, identified as a board-certified orthopedic surgeon, upheld the Carrier's denial. Citing Official Disability Guidelines (ODG), the IRO reviewer stated that the "medical records do not contain indications for the requested procedure". See C-4, page 5. Specifically, Claimant already underwent a rotator cuff repair and Mumford procedure to decompress the sub-acromial space. The IRO reviewer noted that the ODG does not recommend surgery for small tears, which is what the MRI showed. Additionally, the reviewer described that Claimant's age and inability to raise his arm above 90 degrees also meant that he did not meet the ODG criteria for surgery.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division 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. Also, in accordance with Division Rule 133.308(s), "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 (CCH), 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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to the requested treatments:

Arthroscopy

Definition: An arthroscope is a tool like a camera that allows the physician to see the inside of a joint, and the surgeon is sometimes able to perform surgery through an arthroscope, which makes recovery faster and easier. For the Shoulder, see Surgery and Diagnostic arthroscopy.

Surgery for Rotator Cuff Repair

Recommended as indicated below. Repair of the rotator cuff is indicated for significant tears that impair activities by causing weakness of arm elevation or rotation, particularly acutely in younger workers. However, rotator cuff tears are frequently partial-thickness or smaller full-thickness tears. For partial-thickness rotator cuff tears and small full-thickness tears presenting primarily as impingement, surgery is reserved for cases failing conservative therapy for three months. The preferred procedure is usually arthroscopic decompression, but the outcomes from open repair are as good or better. Surgery is not indicated for patients with mild symptoms or those who have no limitations of activities. *Surgical outcomes are much better in younger patients with a rotator cuff tear, than in older patients, who may be suffering from degenerative changes in the rotator cuff.* [Emphasis added]

Revision rotator cuff repair: The results of revision rotator cuff repair are inferior to those of primary repair. While pain relief may be achieved in most patients, selection criteria should include patients with an intact deltoid origin, *good-quality rotator cuff tissue*, preoperative elevation above the horizontal, and only one prior procedure. [Emphasis added]

ODG Indications for Surgery™ -- Rotator cuff repair:

Criteria for rotator cuff repair with diagnosis of full thickness rotator cuff tear AND Cervical pathology and frozen shoulder syndrome have been ruled out:

1. Subjective Clinical Findings: Shoulder pain and inability to elevate the arm; tenderness over the greater tuberosity is common in acute cases. PLUS
2. Objective Clinical Findings: Patient may have weakness with abduction testing. May also demonstrate atrophy of shoulder musculature. Usually has full passive range of motion. PLUS
3. Imaging Clinical Findings: Conventional x-rays, AP, and true lateral or axillary views. AND MRI, ultrasound, or arthrogram shows positive evidence of deficit in rotator cuff.

Criteria for rotator cuff repair OR anterior acromioplasty with diagnosis of partial thickness rotator cuff repair OR acromial impingement syndrome (80% of these patients will get better without surgery.)

1. Conservative Care: Recommend 3 to 6 months: Three months is adequate if treatment has been continuous, six months if treatment has been intermittent. Treatment must be directed toward gaining full ROM, which requires both stretching and strengthening to balance the musculature. PLUS
2. Subjective Clinical Findings: *Pain with active arc motion 90 to 130 degrees.* AND Pain at night (Tenderness over the greater tuberosity is common in acute cases.) [Emphasis added] PLUS
3. Objective Clinical Findings: Weak or absent abduction; may also demonstrate atrophy. AND Tenderness over rotator cuff or anterior acromial area. AND Positive impingement sign and temporary relief of pain with anesthetic injection (diagnostic injection test). PLUS
4. Imaging Clinical Findings: Conventional x-rays, AP, and true lateral or axillary view. AND MRI, ultrasound, or arthrogram shows positive evidence of deficit in rotator cuff.

Subacromial Decompression

Arthroscopic subacromial decompression does not appear to change the functional outcome after arthroscopic repair of the rotator cuff. Operative treatment, including isolated distal clavicle resection or subacromial decompression (with or without rotator cuff repair), may be considered in the treatment of patients whose condition does not improve after 6 months of conservative therapy or of *patients younger than 60 years* with debilitating symptoms that impair function. The results of conservative treatment vary, ongoing or worsening symptoms being reported by 30-40% patients at follow-up. [Emphasis added]

ODG Indications for Surgery™ -- Acromioplasty:

Criteria for anterior acromioplasty with diagnosis of acromial impingement syndrome (80% of these patients will get better without surgery.)

1. Conservative Care: Recommend 3 to 6 months: Three months is adequate if treatment has been continuous, six months if treatment has been intermittent. Treatment must be directed toward gaining full ROM, which requires both stretching and strengthening to balance the musculature. PLUS
2. Subjective Clinical Findings: Pain with active arc motion 90 to 130 degrees. AND Pain at night. PLUS
3. Objective Clinical Findings: Weak or absent abduction; may also demonstrate atrophy. AND Tenderness over rotator cuff or anterior acromial area. AND Positive impingement sign and temporary relief of pain with anesthetic injection (diagnostic injection test). PLUS
4. Imaging Clinical Findings: Conventional x-rays, AP, and true lateral or axillary view. AND MRI, ultrasound, or arthrogram shows positive evidence of impingement.

Distal Clavicle Resection

ODG Indications for Surgery™ -- Partial claviclectomy:

Criteria for partial claviclectomy (includes Mumford procedure) with diagnosis of post-traumatic arthritis of AC joint:

1. Conservative Care: At least 6 weeks of care directed toward symptom relief prior to surgery. (Surgery is not indicated before 6 weeks.) PLUS
2. Subjective Clinical Findings: Pain at AC joint; aggravation of pain with shoulder motion or carrying weight. OR Previous Grade I or II AC separation. PLUS
3. Objective Clinical Findings: *Tenderness over the AC joint* (most symptomatic patients with partial AC joint separation have a positive bone scan). AND/OR Pain relief obtained with an injection of anesthetic for diagnostic therapeutic trial. [Emphasis added] PLUS
4. Imaging Clinical Findings: Conventional films show either: Post-traumatic changes of AC joint. OR Severe DJD of AC joint. OR Complete or incomplete separation of AC joint. AND Bone scan is positive for AC joint separation.

Claimant presented a letter of medical necessity from Dr. P, as well as his medical records, in support of his position that the requested left shoulder arthroscopy and post-operative physical therapy met the applicable ODG criteria. However, that information was not admitted at the hearing due to a failure to exchange the evidence. Carrier called Dr. BS as an expert witness, and he opined that the IRO decision was accurate and he agreed with it. Additionally, Dr. S pointed out that Claimant did not have the good-quality rotator cuff tissue required for a new surgery to be successful. With regard to the Mumford procedure requested, Dr. S also noted that Claimant did not exhibit tenderness over the AC joint required by the ODG.

Considering the medical evidence in the record, the Hearing Officer determines that Claimant has not met his burden to overcome the decision of the IRO by a preponderance of evidence-based medical evidence. Therefore, it is determined that Claimant is not entitled to the left shoulder arthroscopy and post-operative physical therapy for the compensable injury of (Date of Injury).

The Hearing Officer 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 the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Texas Mutual Insurance, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The Independent Review Organization determined Claimant should not have the left shoulder arthroscopy and post-operative physical therapy.
2. Carrier delivered to Claimant and Provider a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The left shoulder arthroscopy and post-operative physical therapy is not health care reasonably required 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.
3. The preponderance of the evidence is not contrary to the decision of the IRO that the left shoulder arthroscopy and post-operative physical therapy is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to left shoulder arthroscopy and post-operative physical therapy for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §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, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 28th day of February, 2017.

AMANDA BARLOW
Hearing Officer