

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUE

A contested case hearing was held on January 30, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that left knee arthroscopy and debridement chondromalacia is not a reasonable and necessary medical treatment for the ___ compensable injury?

PARTIES PRESENT

Claimant appeared and was assisted by an (Ombudsman).

Carrier appeared and was represented by an (Attorney).

BACKGROUND INFORMATION

Claimant sustained a compensable trip and fall injury while at work on ____. She fell forward, landing on both knees. She also had symptoms to her back and left wrist.

Claimant sought chiropractic treatment on August 15, 2007. Dr. C sent Claimant for a left knee MRI and referred her to Dr. S for an orthopedic evaluation. The left knee MRI dated August 17, 2007, was read to show grade 3/4 chondromalacia at the patellofemoral joint, mild cartilage fissuring and minimal physiological joint effusion.

Claimant was evaluated by Dr. S, Orthopedic Surgeon, on August 27, 2007. He reviewed the MRI findings. On physical exam, he noted Claimant had difficulty with full extension and some crepitus on motion of the left knee. Dr. S recommended examination under anesthesia, arthroscopy, and debridement of the chondromalacia. At this stage, Claimant had received no treatment of any type for the left knee. Dr. S's report does not address the Official Disability Guidelines (ODG).

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 qualified 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.

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 Official Disability Guidelines (ODG).

The Carrier denied Dr. S's request for arthroscopy evaluation and debridement of the left knee because of lack of evidence as to the failure of conservative care. It is noted that Dr. S treatment request was made prior to Claimant receiving any treatment for the left knee.

Dr. C filed a request for review by an Independent Review Organization (LHL 009) on October 19, 2007.

The IRO decision dated November 1, 2007, upheld the Carrier's denial of the requested treatment. The IRO doctor quoted the ODG indication for diagnostic arthroscopy and noted that Claimant had not failed conservative care. He specifically noted that Claimant had received an injection with Depo-Medrol, but the results of the injection had not been determined. Claimant appealed the IRO decision on November 15, 2007.

A Pre-Hearing Conference (PHC) was scheduled at the (City) Field Office on December 3, 2007. The PHC was continued initially at the request of the Carrier and a second time at the request of the Claimant. The PHC was conducted on January 4, 2008, and Medical Contested Case Hearing (MCCH) was set for January 30, 2008.

The facts of this case present a unique problem. At the time of the IRO decision on November 1, 2007, Claimant had not provided documentation that she had failed conservative care as set out in the ODG. Claimant was less than three months from her date of injury. The result of the injection treatment was not available. Thus, the IRO decision as of November 1, 2007 was correct.

At the time of the Contested Case Hearing (CCH), almost 3 months after the IRO decision, Claimant sought to provide evidence that she had indeed failed conservative treatment. This was the ODG treatment that the IRO reviewer found to be missing. Even if evidence based medicine was presented, it would not change the decision. If allowed, this, in effect, would permit the Claimant to amend her request for treatment after review by the Carrier and after review and decision of the IRO. This would subvert the medical review process. Clearly, Claimant's doctor's request for arthroscopy was premature in this case. If Claimant or her doctor believe that she has now met the ODG requirements for treatment, she can resubmit her request. Any resubmission must be supported by evidence based medicine as required by the Texas Workers' Compensation Act.

I find that the preponderance of the medical evidence is not contrary to the IRO decision that left knee arthroscopy and debridement procedure is not health care reasonably required.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

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 ____, Claimant was the employee of (Employer).
2. Carrier delivered to Claimant 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 3.
3. As of the date of the IRO decision, Claimant had not complied with the Official Disability Guidelines (ODG) concerning left knee arthroscopy and debridement chondromalacia.
4. The preponderance of the evidence is not contrary to the IRO decision that left knee arthroscopy and debridement, chondromalacia is not a reasonable and necessary medical treatment for the ____ compensable 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. Left knee arthroscopy and debridement chondromalacia are not reasonable and necessary medical treatment for the compensable injury of ____.

DECISION

Left knee arthroscopy and debridement chondromalacia are not reasonable and necessary medical treatment for the compensable injury of ____.

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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063**

Signed this 4th day of February, 2008.

Donald E. Woods
Hearing Officer