

**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 February 25, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that physical therapy for the right knee 3 hours per week for 4 weeks is not 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 worked as a forklift operator for the Employer's warehouse. He injured his right knee stepping off of the forklift on \_\_\_\_.

Claimant was diagnosed with a right knee torn medial meniscus and underwent arthroscopic surgery on October 11, 2005. Claimant had approximately 4 weeks of physical therapy after the surgery. He continued to have knee pain. In May 2006, a right knee MRI was read to show a re-tear of medial meniscus.

Claimant had a second arthroscopic right knee surgery on June 20, 2006. Following surgery, Claimant received physical therapy for 2 months. Claimant's knee pain never resolved. Claimant had a right knee arthrogram in February 2007. It was read to show a developing small partial tear of the patellar tendon. Claimant was placed in a knee immobilizer in March 2007. Claimant used the knee immobilizer until July 2007. The knee pain never resolved. Claimant's treating doctor has recommended further physical therapy and it is this third series of physical therapy that is the subject of this hearing.

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).

Claimant's treating doctor, in making his request for additional physical therapy, did not address the ODG or any other evidence based medicine. He simply prescribed additional physical therapy.

Claimant's request for additional physical therapy was denied by the Carrier and then referred to an Independent Review Organization for decision. The IRO decision dated November 20, 2007 found the request is not considered medically necessary, based on the Official Disability Guidelines (ODG), and thus, the previous denial of the Carrier is upheld.

Claimant failed to justify his need for additional physical therapy based on the ODG or any other evidence based medicine guidelines. I find the preponderance of the evidence is not contrary to the IRO report.

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 2.
3. Claimant's treating doctor requested additional physical therapy, but did not provide justification as set out in the Official Disability Guidelines (ODG).
4. The IRO decision found the request for additional physical therapy was not medically necessary based on the Official Disability Guidelines (ODG).
5. The preponderance of the evidence is not contrary to the IRO decision.

## 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 IRO decision that physical therapy 3 times a week for 4 weeks is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_\_.

## DECISION

The preponderance of the evidence is not contrary to the IRO decision that physical therapy 3 times a week for 4 weeks is 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 **LIBERTY INSURANCE CORPORATION**, and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201**

Signed this 28th day of February, 2008.

Donald E. Woods  
Hearing Officer