

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 benefit contested case hearing was held on February 15, 2008, to decide the following disputed issue:

Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that arthroscopy of the right knee is a reasonable and necessary health care service for the compensable injury of ___?

PERSONS PRESENT

Requestor, Texas Mutual Insurance Company appeared and was represented by an (Attorney). Respondent, CJ appeared and was assisted by an (Ombudsman).

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a right knee injury as the result of her ___ compensable injury. Claimant underwent right medial and lateral meniscectomy on January 9, 2007 for treatment of her compensable injury. She subsequently underwent a significant physical therapy regimen, including chronic pain management, which did not improve her condition. Her treating orthopedic surgeon performed a repeat MRI on May 1, 2007, which showed no evidence of a meniscus tear, but did reveal degenerative signal. The surgeon recommended diagnostic arthroscopy to determine whether pathology was missed on the MRI, as well as correction of internal derangement at the prior surgical area.

Carrier denied preauthorization for the repeat arthroscopy. The treating surgeon discussed the proposed surgery with the preauthorization reviewer and informed him that there was no other treatment option available for treatment of the compensable injury, but the procedure was denied.

An IRO reviewer and board certified orthopedic surgeon, reviewed the medical records, including the May 10, 2007 MRI report and noted that the *ODG* states that the criteria for diagnostic arthroscopy includes failure of conservative care, pain in functional limitations continuing despite conservative care, and inconclusive imaging. He opined that Claimant meets the *ODG* criteria, citing her failed extensive postoperative treatment and continued swelling and pain. He further commented that Claimant's May 10, 2007 MRI was performed in an open MRI, which has weak magnets and was not enhanced. He opined that the MRI findings were inconclusive and agreed with the requesting physician that the recommended surgery was medically necessary.

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. **Section 401.011(22-a)** defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.” “Evidence based medicine” is further defined, by **Section 401.011(18-a)** as 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 in making decisions about the care of individual patients.

The Division of Workers’ Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*.

As noted by the IRO doctor, Claimant meets the ODG criteria for the requested surgery. She has failed extensive conservative care, has pain in functional limitations despite conservative care, and has inconclusive imaging according to both the IRO and the treating orthopedic surgeon.

Carrier asserts that the IRO doctor based his opinion that the imaging was inconclusive on the fact that the MRI was performed in an open MRI, asserting that the doctor would discredit all open MRI reports. The IRO report does not say that. The IRO reviewer and Claimant’s treating orthopedic surgeon noted that the MRI revealed an impression of myxoid degenerative signal in the menisci, without evidence of a tear. This imaging is, according to the IRO review and treating doctor, inconclusive in light of Claimant’s continued complaints of pain and failed conservative care.

As noted previously herein, “health care reasonably required” means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community. The Division requires health care providers to provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required. The opinion offered by the Carrier is not sufficient to rebut the presumption afforded the IRO’s *ODG*-based opinion herein.

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert’s bald assurance of validity is not enough. *See Black v. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). When determining reliability, the hearing officer must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert’s qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique’s potential rate of error; (5) the availability of other experts to test and evaluate the

technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990).

In the instant case, the Carrier failed to meet its burden of proof. The treating doctor's proposed treatment is in accord with the *ODG* and supported by the IRO. The Carrier failed to present evidence-based medical evidence to the contrary. The peer review doctor's opinion in the absence of evidence-based medicine justifying departure from the *ODG*, does not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested right knee arthroscopy for this injured worker meet the criteria set out in the *ODG*.

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) when she sustained a compensable injury.
 - C. The IRO determined that the requested services were reasonable and necessary health care services for the compensable injury of ____.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The treating doctor requested right knee arthroscopy after extensive conservative failed; Claimant continued to have pain in functional limitations despite that conservative care; and, Claimant had an inconclusive MRI.
4. The requested service is consistent with the *ODG* criteria for right knee arthroscopy.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of IRO that outpatient right knee arthroscopy is a reasonable and necessary health care service for the compensable injury of ____.

DECISION

The preponderance of the evidence is not contrary to the decision of IRO that outpatient right knee arthroscopy is a reasonable and necessary health care service for the compensable injury of ____.

ORDER

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act and the Commissioner's Rules.

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

**MR. RUSSELL OLIVER, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Signed this 14th day of April, 2008.

Erika Copeland
Hearing Officer