

**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 (BCCH) was held on December 5, 2007, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Independent Review Organization (IRO) report that a custom molded longitudinal/metatarsal arch support is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by an (Ombudsman).

Carrier appeared and was represented by an (Attorney).

Also present were SL, MV, TH.

**BACKGROUND INFORMATION**

Claimant worked as a truck driver for the Employer. She injured her right knee jumping off of a truck on \_\_\_\_\_. She ultimately had a right knee replacement in 1996 by Dr. W.

Claimant testified that Dr. W provided a custom molded arch support for her to wear after recovery from the total knee replacement. These custom molded arch supports lasted from one to two years and were replaced by new arch supports. Over the past 10 years, Claimant has had several prescriptions for custom molded arch supports that were paid by the Carrier.

Claimant had a Required Medical Examination (RME) by Dr. Wi in 2005. Dr. Wi specifically addressed the medical necessity of the orthotic inserts. He found the orthotic inserts for shoes, as ordered by Dr. W, to be reasonable and necessary medical treatment and related to the original injury.

In 2007, Claimant's right knee became more symptomatic. Claimant had changed treating doctors to Dr. N. He performed revision surgery on July 9, 2007. Dr. N provided a prescription for custom molded arch supports after the recent surgery.

The Carrier denied Claimant's request for custom molded arch supports. Claimant filed a request for review by an IRO. The dispute was forwarded to an IRO for review. The IRO reviewer found that the previous adverse determination should be upheld. Claimant has appealed this decision to a Medical Contested Case 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).

In this case, I find that the ODG does not cover the topic of custom molded arch supports for the treatment of a knee injury. Neither party submitted other evidence based medicine to support their position. In the infrequent case where evidence based medicine is not available, the statutory criterion is to determine the generally accepted standards of medical practice recognized in the medical community.

Claimant presented evidence from 3 orthopedic surgeons who recommended custom molded arch supports for the treatment of Claimant's compensable injury. Two of the doctors practice in the (City 1) area. The third doctor has his medical practice primarily in the (City 2) area. All 3 doctors have a longstanding orthopedic practice in their respective medical communities. The key factor is not that the 3 doctors all recommended the arch support in question, but that the sum total of their opinions set out what are the generally accepted standards of medical practice recognized in the medical community. In addition, the IRO decision does not apply the statutory standard. It incorrectly takes the position that if a topic is not covered in the ODG, it is never authorized.

I find the treatment requested by the Claimant to be within the generally accepted standard of medical practice recognized in the medical community and, therefore, meets the statutory criterion for 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 1) 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. Dr. W, an orthopedic surgeon, prescribed custom molded arch supports following Claimant's total knee replacement in 1996.
  4. Dr. Wi, the RME orthopedic surgeon, examined Claimant in 2005 and found the custom molded arch supports to be reasonable and necessary medical treatment for this right knee injury.
  5. Following right knee revision surgery on July 9, 2007, Dr. N, an orthopedic surgeon, prescribed custom molded arch supports for Claimant's right knee injury.
  6. The IRO decision upheld the Carrier's denial of the custom molded arch supports, noting that the subject was not covered in the ODG.
  7. The opinions of Doctors W, Wi and N are evidence as to the generally accepted standard of medical practice recognized in the medical community.
  8. The preponderance of the evidence is contrary to the IRO report that a custom molded longitudinal/metatarsal arch support is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_\_.

### **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 1) Field Office.
3. The custom molded longitudinal/metatarsal arch support is reasonable and necessary treatment for the compensable injury of \_\_\_\_\_.

### **DECISION**

The custom molded longitudinal/metatarsal arch support is reasonable and necessary treatment 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 **THE INSURANCE COMPANY OF THE STATE OF PA**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701-3232**

Signed this 14th day of February, 2008.

Donald E. Woods  
Hearing Officer