

MEDICAL CONTESTED CASE HEARING NO. 08052
M6-08-10970-01

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 April 8, 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 total knee arthroplasty is not a reasonable and necessary health care services for the compensable injury of ___?

PERSONS PRESENT

Claimant appeared and was assisted by an (Ombudsman). Carrier appeared and was represented by attorney. Also present was MC. The court reporter was CW.

BACKGROUND INFORMATION

On ___, Claimant sustained a compensable injury when the 18-wheeler he was driving jack-knifed. During the course of that accident, Claimant's left knee hit the driving column in the vehicle, and he injured the knee.

Claimant received conservative treatment, including extensive physical therapy, a knee immobilizer and medication, and ultimately underwent arthroscopy surgery for excision of a torn medial and lateral meniscus, debridement and chondroplasty of the medial femoral condyle and medial tibial plateau. Claimant's treating orthopedic surgeon noted that his chondroplasty had failed; and, he had one steroid injection, which did not provide any lasting relief. The surgeon opined that due to the failed conservative treatment and arthroscopic surgery, Claimant needs total knee replacement.

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*.

Preauthorization denials cited the ODG for the proposition that Claimant needed further conservative treatment including injections, visco supplementation and weight loss and increased activity.

The IRO reviewer, an orthopedic surgeon, upheld the denial and opined that while Claimant technically met many of the criteria stated in the ODG for the performance of total knee arthroplasty, he needed “additional effort to achieve relief of symptoms non operatively. The reviewer cited page 849 of the ODG, and opined that the more conservative of the treatments recommended by the ODG had not been exhausted in this case.

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.

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 claimant failed to meet his burden of proof. While the claimant presented evidence and the opinion of his treating doctor, the claimant failed to present evidence-based medical evidence as to the appropriateness of the proposed procedure, he failed to establish that no such evidence-based medical evidence is available, and he failed to present evidence that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. Dr. S’s medical reports, without reference to the *ODG* or other evidence-based medicine justifying departure from the *ODG*, do 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 total knee arthroplasty for this injured employee does not 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 he sustained a compensable injury.
 - C. The IRO determined that the requested services were not 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 a total left knee arthroplasty.
4. The requested service is not consistent with the *ODG* criteria for total knee arthroplasty.
5. A total left knee arthroplasty is not a reasonable and necessary health care service 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 was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of IRO that a total left knee arthroplasty is not 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 a total left knee arthroplasty is not a reasonable and necessary health care service 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 Section 408.021.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.**

Signed this 21st day of April, 2008.

Erika Copeland
Hearing Officer