

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 scheduled for August 5, 2008 but reset to and held on October 1, 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 removal of hardware from the left patella one year after fracture is not a reasonable and necessary health care service for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by MH, ombudsman. Carrier appeared, telephonically, and was represented by RJ, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable left patella fracture. Claimant underwent an ORIF and was doing well after the surgery. X-rays performed on April 9, 2008 revealed that the hardware was in good position but, on April 21, 2008, the x-rays revealed that the hardware was migrating. Prior to the April 21, 2008 examination, Dr. S recommended removal of the hardware because the Claimant stated that the hardware was "bothering him." The Claimant testified that he experiences pain in his knee every time he exerts any pressure to his knee. The request for removal of the hardware in the left patella was denied by the Carrier and referred to an IRO.

The IRO reviewer, an orthopedic surgeon, recommended that the hardware removal not be authorized. The IRO reviewer's rationale was that the Claimant's hardware was in a good position and the fracture had healed. The IRO reviewer noted that, in the absence of any intervening injury and given the excellent condition the Claimant portrayed on April 9, 2008, the Claimant's complaints documented on April 21, 2008 did not make sense. The IRO reviewer concluded that removal of the hardware was not 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 *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*.

The Claimant argued that, although the *ODG* does not address removal of hardware from the patella, it does address fracture fixation for the ankle. The *ODG's* recommendations for removal of hardware for the ankle are similar to the criteria cited by the IRO. The IRO reviewer stated that, although the *ODG* does not address implant or hardware removal, the Journal of the American Academy of Orthopedic Surgeons does in Vol. 14, No. 2, Feb. 2006, pgs 113-120:

Although hardware removal is commonly done, it should not be considered a routine procedure. The decision to remove hardware has significant economic implications, including the costs of the procedure as well as possible work time lost for postoperative recovery. The clinical indications for implant removal are not well established. There are few definitive data to guide whether implant removal is appropriate. Implant removal may be challenging and lead to complications, such as neurovascular injury, refracture, or recurrence of deformity. When implants are removed for pain relief alone, the results are unpredictable and depend on both the implant type and its anatomic location. Current literature does not support the routine removal of implants to protect against allergy, carcinogenesis, or metal detection. Surgeons and patients should be aware of appropriate indications and have realistic expectations of the risks and benefits of implant removal.

In response to the question posed to the treating doctor regarding what evidence based medicine he relied on when he requested the surgery, Dr. S simply stated that the fracture is healed and the hardware may be electively removed if symptomatic for the patient. Dr. S failed to address the *ODG* or the Journal of the American Academy of Orthopedic Surgeons as cited by the IRO nor did he explain why the proposed surgery would be appropriate or necessary considering evidence based medicine. Based on the evidence presented, the Claimant failed to provide evidence based medicine sufficient to contradict the determination of the IRO and the greater weight of the credible evidence is not contrary to the decision of the IRO.

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.

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 the Claimant undergo removal of hardware from the left patella to treat the compensable injury of _____.
4. The requested service is not addressed in the *ODG* but does not meet the recommendations as set out in the Journal of the American Academy of Orthopedic Surgeons.
5. The Claimant failed to provide evidence based medicine contrary to the IRO's determination that removal of hardware from the left patella is not reasonable and necessary health care 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 removal of hardware from the left patella one year after fracture 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 removal of hardware from the left patella one year after fracture is not a reasonable and necessary health care service for the compensable injury of _____.

ORDER

The carrier is not liable for the benefits at issue in this hearing. The 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 the **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TX 75201**

Signed this 2nd day of October, 2008.

Carol A. Fougerat
Hearing Officer