

**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.

**ISSUES**

A contested case hearing was held on May 11, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that left knee arthroscopy with OATS procedure is not health care reasonably required for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was represented by RS, an attorney. Petitioner/Provider KB, M.D. appeared as a witness in this matter. Respondent/Carrier appeared and was represented by WS, an attorney.

**BACKGROUND INFORMATION**

The evidence presented in the hearing revealed that the claimant sustained a compensable injury to her left knee on \_\_\_\_\_ after a fall. The evidence further revealed that, since the injury, the claimant has received conservative treatment, such as medication and physical therapy, as well as surgical intervention. On March 15, 2007, IR, M.D. performed arthroscopic surgery in the form of patellar chondroplasty, lateral release, and chondroplasty of the medial femoral condyle on the claimant's left knee. The claimant stated that she continued to have pain in her left knee after this procedure and, in April 2008, she began treating with KB, M.D., an orthopedic surgeon. In a report from a patient visit on July 8, 2008, KB wrote that he reviewed arthroscopic images from the claimant's March 15, 2007 surgery and, based on these images, he opined that the surface of cartilage in the claimant's left knee appeared irregular and "was sculpted with a heat wand." KB further noted that avascular necrosis can occur after the use of "bipolar wands" and that "although the cartilaginous surface is smooth on the arthroscopic images, the curvature of the joint was significantly altered." Based on these observations, KB recommended a left knee arthroscopy with OATS (Osteochondral autograft transplant system) procedure.

After KB requested pre-authorization for the proposed procedure, two utilization reviews were conducted. The first, dated July 18, 2008, was performed by PG, M.D., an orthopedic surgeon, who opined that the proposed procedure was not medically necessary. Dr. PG's report indicates that the rationale behind his denial of the procedure was that the claimant did not meet all of the indications for surgery found in the Official Disability Guidelines (ODG).

The second utilization review was conducted on July 24, 2008 by KA, M.D., who, like Dr. PG, is an orthopedic surgeon. Dr. KA noted in his denial that the March 15, 2007 arthroscopic

procedure did not include subchondral drilling or a microfracture. Dr. KA further included concerns about the claimant's age, body mass index (BMI), as well as psychological features documented in the records. Following Dr. KA's denial, a request for review by an IRO was made. The IRO reviewer, also an orthopedic surgeon, upheld the denial of the left knee arthroscopy with OATS procedure.

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.

With regard to the OATS procedure, the ODG provides,

"Recommended as indicated below. Cartilage grafts and/or transplantations remain controversial. There is some scientific evidence of effectiveness in patients with a singular, traumatically caused grade III or IV femoral condyle deficit that are under 40 years of age with have an active lifestyle. The aim of the OATS technique is to slow down the development of osteoarthritis. The available evidence from individually published case series is not sufficient to permit definitive conclusions concerning the effectiveness of either mosaicplasty or the OATS procedure. However, collectively, the outcomes of these case series are consistent in reporting decreased pain and improved function, particularly in younger patients with moderately sized defects. (Agneskirchner, 2002) (Bobic, 1996) (Colorado, 2001) (BlueCross BlueShield, 2003) Osteochondral autograft transplantation, with underlying bone, aims to capitalize on bone-to-bone healing because damaged cartilaginous tissue has limited potential to heal completely with surrounding cartilage. This arthroscopic 1-step surgery appears to be a valid solution for treatment of small, grade III to IV cartilage defects. (Marcacci, 2007)

**ODG Indications for Surgery**<sup>™</sup> -- **Osteochondral autograft transplant system (OATS):**

**Criteria** for osteochondral autograph transfer system [OATS] procedure:

- 1. Conservative Care:** Medication. OR Physical therapy. PLUS
- 2. Subjective Clinical Findings:** Joint pain. AND Swelling. PLUS
- 3. Objective Clinical Findings:** Failure of previous subchondral drilling or microfracture: Large full thickness chondral defect that measures less than 3 cm

in diameter and 1 cm in bone depth on the weight bearing portion of the medial or lateral femoral condyle. AND Knee is stable with intact, fully functional menisci and ligaments. AND Normal knee alignment. AND Normal joint space. AND Body mass index of less than 35. PLUS

**4. Imaging Clinical Findings:** Chondral defect on the weight-bearing portion of the medial or lateral femoral condyle on: MRI. OR Arthroscopy. (Washington, 2003)”.

Based on a careful review of the evidence presented in the hearing, the provider and the claimant failed to meet their burden of overcoming the IRO decision by a preponderance of the evidence-based medicine. The IRO decision in this case is based on the ODG and the evidence revealed that the claimant failed to meet all of the necessary criteria for surgery prescribed in the ODG. The preponderance of the evidence-based medicine is not contrary to the decision of the IRO and, consequently, the claimant is not entitled to the proposed left knee arthroscopy with OATS procedure.

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 \_\_\_\_\_, the claimant was the employee of (Employer), and sustained a compensable injury to her left knee.
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. Left knee arthroscopy with OATS procedure is not health care reasonably required 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) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that left knee arthroscopy with OATS procedure is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to left knee arthroscopy with OATS procedure 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 **SUA INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM  
350 NORTH ST PAUL STREET  
DALLAS, TX 75201**

Signed this 15<sup>th</sup> day of May, 2009.

Jennifer Hopens  
Hearing Officer