

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 18, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a right ankle arthroplasty for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RPR, ombudsman.
Respondent/Carrier appeared and was represented by SL, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his right ankle on _____ when he fell off of a 24 foot ladder. Claimant sustained a severe pylon fracture and underwent an external fixation with subsequent removal of the external fixer. Claimant has received treatment in the form of physical therapy and medications. As a result of this injury, the Claimant developed severe osteoarthritis of the right ankle. Claimant's treating doctor, Dr. P, recommended a total ankle arthroplasty noting that the arthroplasty would be a very good alternative to a fusion given the Claimant's age and desire to retain range of motion of the right ankle. The requested procedure was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, (IRO), upheld the previous adverse determination concluding that the Claimant did not meet the criteria set forth by the *ODG* for a total ankle replacement. The IRO reviewer noted that the *ODG* does not support the need for ankle arthroplasty due to the high failure rate; Therefore, in this case, is not supported by the *ODG* in the records provided.

Pursuant to the *ODG* for ankle replacements (arthroplasty):

Not recommended for total ankle. Under study for first metatarsophalangeal joint implant arthroplasty. Total ankle replacement has been investigated since the 1970s with initially promising results, but the procedure was essentially abandoned in the 1980s due to a high long-term failure rate, both in terms of pain control and improved function. Currently, four ankle prostheses are commercially available or under investigation in the U.S. The main alternative to total ankle replacement is arthrodesis. While both procedures are designed to reduce pain, the total ankle replacement is additionally intended to improve function. At the present time there are inadequate data on available total ankle replacements to permit conclusions regarding their safety and effectiveness. (BlueCross

BlueShield, 2004) (SooHoo, 2004) (Stengel, 2005) (Valderrabano, 2007) (Vickerstaff, 2007).

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.

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 *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 *ODG*.

Claimant's treating doctor opined that an ankle fusion could be considered, however, once the ankle is fused there is no way back and the patient will develop osteoarthritic changes in the subtalar joint even in the midfoot in the future. The treating doctor recommended the arthroplasty as a very good alternative for this Claimant because of his age, the fact that he wants to retain his range of motion of the ankle and because of the fact that revision in 10 years is not all that bad. The treating doctor noted that he has performed about 40 total ankle replacements and that these patients are doing a lot better after a successful total ankle replacement versus a fusion. The treating doctor did not address the *ODG* nor did he cite any evidence based medicine to support his recommendation for the ankle arthroplasty. Dr. P’s records and conclusory statements, without evidence-based medicine justifying departure from the *ODG*, do not meet the requisite evidentiary standard required to overcome the *ODG*. The preponderance of the evidence is not contrary to the IRO decision and the requested procedure of a right ankle arthroplasty is not recommended 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).
 - C. Claimant sustained a compensable injury on _____.

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. The requested procedure is not consistent with the recommendation in the *ODG* for a right ankle arthroplasty.
4. The requested right ankle arthroplasty 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 the Claimant is not entitled to a right ankle arthroplasty for the compensable injury of _____.

DECISION

Claimant is not entitled to a right ankle arthroplasty 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN, TX 78701**

Signed this 18th day of May, 2009.

Carol A. Fougerat
Hearing Officer