

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 June 4, 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 diagnostic arthroscopy of the knee, with or without synovial biopsy (separate procedure), is not reasonably required health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MF, ombudsman. Respondent/Carrier appeared by telephone and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable right leg injury on _____, while working as a floor hand on a drilling rig operated by (Employer). He had an open reduction and internal fixation and closure of a right fibular fracture on _____, and diagnostic arthroscopy with a partial synovectomy and removal of plica in the right knee on February 11, 2008. Both the _____, and February 11, 2008, surgeries were performed by Dr. M, MD (Dr. M) of (City), Texas. Claimant continued to have problems with his right knee and Dr. M referred Claimant to Dr. E, MD (Dr. E). Dr. E first saw Claimant on January 19, 2009. Dr. E has requested preauthorization to perform a second diagnostic arthroscopy of the right knee. In a letter dated May 5, 2009, Dr. E stated:

On my examination [on January 19, 2009, Claimant] had significant varus laxity compared to the opposite knee. There was also the concern about posterolateral rotation compared to the opposite knee. The varus laxity was noted in full extension as well as 30 degrees of flexion and was definitely significantly greater in the affected leg than his non affected (sic) leg. Based on this, I am concerned that there is at least an incompetent fibular collateral ligament and I cannot rule out the possibility of a posterolateral corner injury. I do feel that more than likely we are dealing with a fibular collateral ligament incompetence.

The preauthorization request was initially reviewed by Dr. G, MD (Dr. G) of (name). Dr. G stated that a right knee arthroscopy with lateral collateral ligament advancement vs. posterolateral corner reconstruction was not medically necessary because no exam notes were available to support the diagnosis of a posterolateral corner injury. Dr. E was advised that the request for arthroscopy, knee, diagnostic, with or without synovial biopsy was denied on

February 12, 2009. The request was resubmitted and was again sent to (name) by Carrier. The second utilization review agent was Dr. U, MD (Dr. U). Dr. U agreed with Dr. G's prior denial of the requested procedure, stating that the request was not supported by documentation of the knee exam or MRI findings. Specifically, Dr. U noted that there was no mention of the degree of lateral laxity, the amount of laxity at 0, 30, and 90 degrees of flexion, or the results of a dial test. Dr. U reviewed relevant literature on the medical necessity of surgical intervention for PLC injuries, concluding that the requested procedure was not medically necessary in light of the poor documentation of exam findings and the MRI findings.

Claimant appealed the denial and the Texas Department of Insurance appointed an Independent Review Organization (IRO), (Independent Review Organization), to review the available documentation and determine whether Carrier's denial of preauthorization should be overturned. The IRO physician reviewer, an MD board certified in orthopedic surgery, reviewed the Official Disability Guidelines (ODG); prior adverse determination letters; several peer reviews; records from Dr. E from January through March of 2009; MRIs of Claimant's knee from 2007 and 2009; Dr. M's records from January 5, 2008; the operative reports from _____, and February 11, 2008; a discharge summary from the hospital dated June 4, 2007; a designated doctor evaluation from May of 2008; and a functional capacity evaluation from May of 2008. The physician reviewer stated that the current request was for a knee arthroscopy, diagnostic, with or without synovial biopsy, but the records seemed to indicate that the surgeon wanted to perform either lateral collateral ligament advancement or posterior lateral corner repair. The physician reviewer concluded that there is no evidence of internal problems within the knee that would require arthroscopic evaluation per the ODG. He also found that the guidelines for synovial biopsy were not met. He commented that the medical records did not address the indications for a lateral reconstruction of the collateral ligament or the posterolateral corner and he was unable to determine from the records provided whether a grade 3 lesion was present. The physician reviewer also noted that the MRI did not indicate any disruption of the posterolateral corner or lateral collateral ligament.

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 (Texas Labor Code §408.021). "Health care reasonably required" is defined 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, generally accepted standards of medical practice recognized in the medical community (Texas Labor Code §401.011(22-a)). "Evidence based medicine" means 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 (Texas Labor Code §401.011 (18-a)). In accordance with the above statutory guidance, Rule 137.100 directs health care providers to provide treatment in accordance with the current edition of the ODG, and such treatment is presumed to be reasonably required.

The ODG Knee & Leg treatment guidelines state:

Diagnostic Arthroscopy

Recommended as indicated below.

ODG Indications for Surgery[™] -- **Diagnostic arthroscopy:**

Criteria for diagnostic arthroscopy:

- 1. Conservative Care:** Medications. OR Physical therapy. PLUS
- 2. Subjective Clinical Findings:** Pain and functional limitations continue despite conservative care. PLUS
- 3. Imaging Clinical Findings:** Imaging is inconclusive.
(Washington, 2003) (Lee, 2004)

In the May 5, 2009, letter, Dr. E stated that Claimant complained of significant, unacceptable instability and had varus laxity in the right knee compared to the left. Dr. E concluded:

Because of his failure of all conservative measures and continued episodes of giving out, I do feel that surgical intervention is the best course of treatment. ... If indeed at the time of his surgery on the preoperative exam under anesthesia there is significant posterolateral corner laxity, then a posterolateral reconstruction may be required. I do feel it is imperative to be prepared for either of these procedures. This was discussed with the patient. Because he had failed all conservative measures, he was ready to proceed with surgical intervention.

A fair reading of Dr. E's justification for the requested procedure could provide support for a finding that Claimant had undergone conservative care and that pain and functional limitations continued despite the conservative care, but he makes no mention of inconclusive imaging. Since the requisites under the ODG have not been met for the requested diagnostic arthroscopy, Claimant has failed to prove that the preponderance of the evidence based medical evidence is contrary to the IRO decision.

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 _____.
 - D. The Texas Department of Insurance selected (Independent Review Organization) as the Independent Review Organization to review Carrier's denial of the request for preauthorization of an arthroscopy, knee, diagnostic, with or without synovial biopsy.
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 evidence failed to show that diagnostic imaging of the right knee was inconclusive.

4. Claimant does not meet the ODG criteria for diagnostic arthroscopy.
5. Diagnostic arthroscopy of the knee, with or without synovial biopsy (separate procedure), is not reasonably required 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) Field Office.
3. The preponderance of the evidence is not contrary to the decision of IRO that diagnostic arthroscopy of the knee, with or without synovial biopsy (separate procedure), is not reasonably required medical treatment for the compensable injury of _____.

DECISION

Claimant is not entitled to diagnostic arthroscopy of the knee, with or without synovial biopsy (separate 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 **LIBERTY INSURANCE CORPORATION** 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 9th day of June, 2009.

KENNETH A. HUCHTON
Hearing Officer