

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 contested case hearing was held on July 7, 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 Claimant is not entitled to durable medical equipment consisting of Custom molded long, Arch Support x 2 #I3010, 2 pair 10-15 mmhg Comp Hose, #A6549 Custom molded AF) #L1970, and 2 soft interfaces for BK section #L2820 for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by PJ, ombudsman. Carrier appeared and was represented by BJ, attorney.

BACKGROUND INFORMATION

On _____, Claimant injured her right ankle while on a skating excursion with her 6th grade class. Claimant broke three bones in her right ankle which required surgery and placement of internal hardware. Subsequent to surgery, Claimant developed a dropped right arch and a painful bunion. Claimant continues to have pain and has changed from the surgeon to a new treating doctor who has recommended the durable medical equipment listed in the issue above. Primarily, Claimant is seeking custom made bilateral orthoses.

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be 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 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 Official Disability Guidelines (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.

Under "Ankle foot orthosis (AFO)", the ODG provides:

"Recommended as an option for foot drop. An ankle foot orthosis (AFO) also is used during surgical or neurologic recovery. The specific purpose of an AFO is to provide toe dorsiflexion during the swing phase, medial and/or lateral stability at the ankle during stance, and, if necessary, push-off stimulation during the late stance phase. An AFO is helpful only if the foot can achieve plantigrade position when standing. Any equinus contracture prohibits its successful use. The most commonly used AFO in foot drop is constructed of polypropylene and inserts into a shoe. If it is trimmed to fit anterior to the malleoli, it provides rigid immobilization. This is used when ankle instability or spasticity is problematic, such as in patients with upper motor neuron diseases or stroke. If the AFO fits posterior to the malleoli (posterior leaf spring type), plantar flexion at heel strike is allowed, and push-off returns the foot to neutral for the swing phase. This provides dorsiflexion assistance in instances of flaccid or mild spastic equinovarus deformity. A shoe-clasp orthosis that attaches directly to the heel counter of the shoe also may be used. (Geboers, 2002)

Carrier called as its witness a board certified surgeon who testified that the IRO was correct in reaching its adverse determination based on the ODG in that Claimant does not have a foot drop and in that a custom orthosis would not be reasonable and necessary medical treatment for Claimant's right trimalleolar ankle fracture. Carrier's witness explained that Claimant does not have a foot drop because she has the ability to dorsiflex her right foot. Carrier's witness based his testimony on evidence based medicine consistent the ODG reference quoted above.

Claimant failed to offer any evidence based medicine to contradict the IRO. Therefore, Claimant is not entitled to the durable medical equipment which was prescribed by her current treating doctor.

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 she sustained a compensable injury.

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. Durable medical equipment consisting of Custom molded long, Arch Support x 2 #I3010, 2 pair 10-15 mmhg Comp Hose, #A6549 Custom molded AF) #L1970, and 2 soft interfaces for BK section #L2820 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 durable medical equipment consisting of Custom molded long, Arch Support x 2 #I3010, 2 pair 10-15 mmhg Comp Hose, #A6549 Custom molded AF) #L1970, and 2 soft interfaces for BK section #L2820 is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to durable medical equipment consisting of Custom molded long, Arch Support x 2 #I3010, 2 pair 10-15 mmhg Comp Hose, #A6549 Custom molded AF) #L1970, and 2 soft interfaces for BK section #L2820 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 **TEXAS MUTUAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**RUSSELL OLIVER, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 9th day of July, 2009.

Charles T. Cole
Hearing Officer