

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 August 3, 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 total ankle arthroplasty with tenoachilles lengthening for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by IE, ombudsman.
Respondent/Carrier appeared and was represented by RM, adjuster.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her right ankle on _____. Claimant underwent an open reduction with internal fixation of the right tri-malleolar fracture of her right ankle in July 2007 and removal of hardware in July 2008. An MRI performed on February 13, 2009 revealed a large bone in the distal tibia with collapse of the overlying articular surface and the CT scan dated February 25, 2009 showed moderate to severe post-traumatic osteoarthritis of the ankle joint. Claimant was diagnosed with post-traumatic ankle arthrosis and recommended to undergo a right ankle arthroplasty with tenoachilles lengthening. 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, a board certified orthopedic surgeon, upheld the previous adverse determination concluding that a right total ankle arthroplasty with tendon Achilles lengthening is not medically indicated and appropriate. The IRO reviewer noted that appropriate conservative care has been noted; however, there is evidence of osteonecrosis of the distal tibia in addition to the degenerative change. The IRO reviewer determined that, consistent with the *ODG* (Official Disability Guidelines), total ankle arthroplasty is not indicated.

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*.

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).

Claimant's treating doctor, Dr. C, requested authorization of Tornier product, Salto Talaris, for a total ankle replacement. Dr. C noted that the Claimant did well during the immediate post-operative course but developed recurrent and persistent pain in the ankle shortly following the surgery. Claimant has had multiple modalities to alleviate the pain including physical therapy, an intra-articular injection, pain management with spinal blocks, spinal stimulation, surgery to remove hardware and scheduled doses of NSAIDS. Dr. C opined that other options would likely cause future complications, as it will cause degenerative changes to the distal joints and will leave the Claimant with the need of a "pantalar fusion." Dr. C stated that he attached several published, peer-reviewed articles and concluded that the Claimant was a good candidate for an ankle arthroplasty using the Salto Talaris. The medical literature provided in the Claimant's exhibits is basically documentation to support performing this particular procedure using the Salto Talaris by Tornier. It appears that Dr. C was involved in the development of the trade marked Salto Talaris procedure by Tornier. Although the Claimant offered a report from Dr. C that referred to attached published studies, there was no expert evidence offered regarding those studies.

The treating doctor did not address the *ODG* nor did he cite evidence based medicine to support his recommendation for the ankle arthroplasty. Dr. C' records and conclusory statement that the requested procedure is necessary, 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 right ankle 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 total arthroplasty.
4. The requested right total ankle arthroplasty with tenoachilles lengthening 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 a right total ankle arthroplasty with tenoachilles lengthening is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a right total ankle arthroplasty with tenoachilles lengthening 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 **TWIN CITY FIRE INSURANCE COMPANY** 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 3rd day of August, 2009.

Carol A. Fougerat
Hearing Officer