

**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 4, 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 diagnostic right knee arthroscopy with possible meniscectomy for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant/Petitioner appeared and was assisted by AT, Ombudsman.

Carrier/Respondent appeared and was represented by LH, Attorney.

**BACKGROUND INFORMATION**

Claimant worked as a candy stocker for the Employer's retail store. She injured her right knee while lifting a box on \_\_\_\_\_.

Claimant sought medical treatment on February 11, 2009 at the (Healthcare Provider). She was diagnosed with knee bursitis and fluid build-up. The fluid was aspirated and Claimant was given a steroid injection. Claimant returned for a follow-up visit on February 14, 2009. She was given a diagnosis of right knee strain. She was provided medication and two weeks of physical therapy and placed on light duty.

Claimant returned to the (Healthcare Provider) on February 28, 2009 and knee had not improved. Knee was still swollen. Claimant was referred for a MRI of the right knee.

On March 4, 2009, Claimant had a MRI of the right knee which was read to be normal. Claimant continued to report significant knee pain. She was released to return to work in a sitting job only. Claimant was referred to an orthopedic doctor for evaluation and treatment.

Claimant was evaluated by an orthopedic doctor on March 24, 2009. He found no swelling in the knee, with pain and weakness in the quadricep tendon area. Her knee was stable with varus and valgus stress. No significant patella femoral crepitation was noted. A diagnosis of right knee strain and quadricep tendon strain was made. Claimant was placed on a home rehabilitation program and released to light duty.

Claimant's knee condition worsened and she returned to the orthopedic doctor for evaluation on April 1, 2009. She reported pain over the anterior aspect of her knee and has developed swelling in the knee. She has pain over the medial joint line and pain with a medial

McMurry's Maneuver. She has no symptoms of locking in the knee, but has some catching over the anterior aspect of her knee. The orthopedic doctor concluded that Claimant had failed conservative care and still had pain and swelling in the knee. He changed the diagnosis to possible meniscal tear vs. loose body vs. chondromalacia. He recommended diagnostic right knee arthroscopy.

The Carrier denied the diagnostic arthroscopy, both initially and on reconsideration. The Claimant requested review by an Independent Review Organization (IRO). The IRO decision upheld the Carrier's denial. The Claimant timely requested a Medical Contested Case Hearing (MCCH) to review the IRO decision.

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 Official Disability Guidelines (ODG).

The criteria under the ODG for diagnostic arthroscopy are not disputed by either party:

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.

Claimant meets the first and second criteria. She has failed conservative care and continues to have clinical problems of pain, weakness and swelling of the right knee. The focus of this medical dispute concerns the interpretation of the third criterion. The Carrier argues that the MRI report finding a normal MRI of the right knee is a conclusive report and, therefore, the third criterion has not been met. It argues that a negative or a positive finding on a MRI would not be inconclusive and would not authorize the diagnostic arthroscopy. Only in those MRI reports with a specific finding that the MRI was inconclusive would this criterion be met.

In response to the IRO report, the Claimant offered the opinion of an orthopedic doctor that Claimant did meet all three criteria for further diagnostic testing set out in the ODG. He explained that MRI reports are a good diagnostic resource, but MRI's are still not 100% accurate. He quoted an article from the Journal Of The American Academy Of Orthopedic Surgeons,

May/June 2002 to the effect that MRI studies were 91.5% accurate in diagnosing meniscal tears. In the present case, the orthopedic doctor believes that a diagnostic arthroscopy is required given the inconsistency between the clinical diagnosis and the MRI diagnosis.

I believe the Carrier's argument is incorrect and provides an improper interpretation of this criterion. For example, a positive MRI with specific findings of a lesion, i.e., meniscus tear would be a conclusive finding. The above example is conclusive because Criteria 1, 2, and 3 all reach the same conclusion. No further diagnostic testing is needed. A negative MRI with no abnormalities identified, as we have in this case, would be an inconclusive imaging finding in that it is inconsistent with Criteria 1 and 2. Stated another way, if Claimant meets the criteria set out in 1 and 2, that tends to show a knee problem of some type. A negative MRI, read to show a normal knee, tends to show no knee problem. In such cases, the negative MRI finding is inconclusive and is not decisive of the problem; thus, more diagnostic testing in the form of a diagnostic arthroscopy would be appropriate. This is the position taken by Claimant's orthopedic doctor.

I find that Claimant does meet the criteria set out in the ODG for a diagnostic arthroscopy of the right knee with possible meniscectomy. The preponderance of the evidence-based medicine is contrary to the decision of the IRO. Claimant is entitled to a diagnostic right knee arthroscopy with possible meniscectomy for the compensable injury of \_\_\_\_\_.

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 (Self-Insured), Employer.
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 treating orthopedic surgeon documented that Claimant has failed conservative care and continues to have clinical problems of pain, weakness and swelling of the right knee.
4. The MRI of the right knee was read to show a normal knee and was inconclusive in diagnosing Claimant's continued knee symptoms.
5. Claimant's medical records document compliance with the criteria set out in the ODG for diagnostic arthroscopy.
6. Diagnostic right knee arthroscopy with possible meniscectomy is 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 contrary to the decision of the IRO that diagnostic right knee arthroscopy with possible meniscectomy is not health care reasonably required for the compensable injury of \_\_\_\_\_.

## DECISION

Claimant is entitled to diagnostic right knee arthroscopy with possible meniscectomy for the compensable injury of \_\_\_\_\_.

## ORDER

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules.

The true corporate name of the insurance carrier is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

**CSC  
(STREET ADDRESS)  
(CITY), TEXAS (ZIP CODE)**

Signed this 7th day of August, 2009.

Donald E. Woods  
Hearing Officer