

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 26, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a total right knee arthroplasty, computer-assisted surgical navigation and three-day inpatient length of stay is not health care reasonably required for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

The Claimant is a 30-year employee of (Self-Insured) and has sustained multiple injuries in the course and scope of his employment as a bus/shuttle driver. The Claimant sustained an injury to his right knee on _____ and he underwent arthroscopic surgery to the right knee on January 6, 2000. Claimant has been diagnosed with post-traumatic chondromalacia and tricompartmental traumatic arthritis. Claimant's treating doctor, Dr. H, has recommended a total knee arthroplasty which was denied by the Carrier and sent to the IRO who upheld the Carrier's denial.

The IRO reviewer, a board certified orthopedic surgeon, noted that the criteria for the performance of a total knee arthroplasty within the workers' compensation system includes an admonition that the patient be at a BMI of 35 or less and that this patient's BMI of 42.9 clearly places him in the morbidly obese category. The IRO reviewer stated that it was clear that this patient would be at a high risk for diminished duration of a good result if such was achieved and concluded that medical necessity criteria have not been met to perform this recommended procedure.

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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

The *ODG* addresses the criteria for knee arthroplasty procedure:

ODG Indications for Surgery™ -- Knee arthroplasty:

Criteria for knee joint replacement (If only 1 compartment is affected, a unicompartmental or partial replacement is indicated. If 2 of the 3 compartments are affected, a total joint replacement is indicated.):

1. Conservative Care: Medications. AND (Visco supplementation injections OR Steroid injection). PLUS

2. Subjective Clinical Findings: Limited range of motion. AND Nighttime joint pain. AND No pain relief with conservative care. PLUS

3. Objective Clinical Findings: Over 50 years of age AND Body Mass Index of less than 35. PLUS

4. Imaging Clinical Findings: Osteoarthritis on: Standing x-ray. OR Arthroscopy.

(Washington, 2003) (Sheng, 2004) (Saleh, 2002) (Callahan, 1995”).

The Claimant in this case is 51 years old, 6'1" in height and weighs approximately 325 pounds. Claimant's body mass index (BMI) is greater than 40. The *ODG* recommends a BMI of less than 35 for a knee arthroplasty. In a report dated June 8, 2009, Dr. Z (an orthopedic surgeon in the same group of physicians as the treating doctor) states,

"There has been a considerable amount of literature regarding obesity and total knee replacements. It is generally recognized that a total knee replacement, which is well aligned and well fixed, does as well in the obese population as in the general population. This statement is confirmed and included in Orthopedic Knowledge Update -- Textbook 8. This is the very material that the orthopedic community is examined upon for recertification. This statement is included because of [sic] number of studies have been done to confirm what has been stated above."

Dr. Z did not testify nor did he include documentation of the studies and literature that he refers to in his report. Dr. H refers to the OCG Guidelines which state that a British research team reports that a higher BMI should not be contra-indication to total knee arthroplasty provided the patient is sufficiently fit to undergo the short term rigors of surgery and he goes on to conclude that this Claimant is fit enough to undergo the procedure. Dr. H did not testify at the hearing nor

did he include the OCG Guidelines or British research team report that he refers to in his letter dated April 1, 2009.

Based on the evidence presented in the hearing, the Claimant failed to meet his burden of overcoming the IRO decision by a preponderance of the evidence-based medicine. The IRO decision, in this case, is based on the *ODG* and the evidence revealed that the Claimant failed to meet all of the necessary criteria for surgery prescribed in the *ODG*. The preponderance of the evidence-based medicine is not contrary to the decision of the IRO and, therefore, the Claimant is not entitled to the requested right knee arthroplasty at this time.

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 _____, the Claimant was the employee of the (Self-Insured) when he sustained a compensable injury to his right knee.
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 Claimant failed to prove that he meets the requirements in the *ODG* for the requested total right knee arthroplasty and the requested procedure is not consistent with the recommendations in the *ODG*.
4. A total right knee arthroplasty, computer-assisted surgical navigation and three-day inpatient length of stay 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 total right knee arthroplasty, computer-assisted surgical navigation and three-day inpatient length of stay is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled a total right knee arthroplasty, computer-assisted surgical navigation and three-day inpatient length of stay 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**MAYOR OF (CITY)
(STREET ADDRESS), (FLOOR)
(CITY), TX (ZIP CODE)**

Signed this 26th day of August, 2009.

Carol A. Fougerat
Hearing Officer