

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 25, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that an arthroscopic medial and lateral meniscal debridement, chondroplasty, limited synovectomy and lateral retinacular release of the left knee is not health care reasonably required for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

The Claimant/Petitioner (Claimant) sustained an injury to his left knee and thigh on _____ when he struck his left leg on a rung of a ladder while operating machinery. Claimant was initially treated for the left thigh injury but ultimately underwent an MRI of the left knee on February 23, 2009 which revealed tears of both the medial and lateral menisci. Claimant's treating doctor has recommended the Claimant undergo an arthroscopic medial and lateral meniscal debridement, chondroplasty, limited synovectomy and lateral retinacular release of the left knee. The request for these procedures was denied by the Carrier and referred to an IRO who determined that the request was not medically necessary at this time.

The IRO reviewer, a board certified orthopedic surgeon, noted that the clinical documentation was insufficient to justify approval of the requested procedures. The IRO reviewer also noted that the prior denial of this multiple procedure surgical request was appropriate and should be upheld. The IRO reviewer concluded that medical necessity for each of the requested procedures has not been established.

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* recommends the following regarding the requested procedures:

ODG Indications for Surgery™ -- Meniscectomy:

Criteria for meniscectomy or meniscus repair (Suggest 2 symptoms and 2 signs to avoid scopes with lower yield, e.g. pain without other symptoms, posterior joint line tenderness that could just signify arthritis, MRI with degenerative tear that is often false positive):

- 1. Conservative Care:** (Not required for locked/blocked knee.) Physical therapy. OR Medication. OR Activity modification. PLUS
- 2. Subjective Clinical Findings (at least two):** Joint pain. OR Swelling. OR Feeling of give way. OR Locking, clicking, or popping. PLUS
- 3. Objective Clinical Findings (at least two):** Positive McMurray's sign. OR Joint line tenderness. OR Effusion. OR Limited range of motion. OR Locking, clicking, or popping. OR Crepitus. PLUS
- 4. Imaging Clinical Findings:** (Not required for locked/blocked knee.) Meniscal tear on MRI.

ODG Indications for Surgery™ -- Chondroplasty:

Criteria for chondroplasty (shaving or debridement of an articular surface):

- 1. Conservative Care:** Medication. OR Physical therapy. PLUS
- 2. Subjective Clinical Findings:** Joint pain. AND Swelling. PLUS
- 3. Objective Clinical Findings:** Effusion. OR Crepitus. OR Limited range of motion.
- 4. Imaging Clinical Findings:** Chondral defect on MRI
(Washington, 2003) (Hunt, 2002) (Janecki, 1998)

ODG Indications for Surgery™ -- Lateral retinacular release:

Criteria for lateral retinacular release or patella tendon realignment or maquet procedure:

- 1. Conservative Care:** Physical therapy (not required for acute patellar dislocation with associated intra-articular fracture). OR Medications. PLUS
- 2. Subjective Clinical Findings:** Knee pain with sitting. OR Pain with patellar/femoral movement. OR Recurrent dislocations. PLUS
- 3. Objective Clinical Findings:** Lateral tracking of the patella. OR Recurrent effusion. OR Patellar apprehension. OR Synovitis with or without crepitus. OR Increased Q angle >15 degrees. PLUS

4. Imaging Clinical Findings: Abnormal patellar tilt on: x-ray, computed tomography (CT), or MRI.

The Claimant testified that he has had no physical therapy for his left knee but only for the thigh injury. The Claimant's treating doctor notes in a report dated March 26, 2009 that the Claimant needs arthroplasty and debridement of the medial meniscal tear and lateral meniscal tear and that he will need limited synovectomy, probably chondroplasty for the involved cartilage as well as a lateral release. Claimant's treating doctor fails to address the concerns raised by the IRO or the recommendations in the *ODG* for the proposed procedures. The Claimant's left knee MRI reveals tears of both the medial and lateral menisci and the medical records indicate that the Claimant does suffer from some of the symptoms addressed in the *ODG*. However, the Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. Therefore, Claimant has not met the requisite evidentiary standard required to overcome the IRO decision and the preponderance of the evidence is not contrary to the IRO decision that the Claimant is not entitled to an arthroscopic medial and lateral meniscal debridement, chondroplasty, limited synovectomy and lateral retinacular release of the left knee 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 _____, the Claimant was the employee of (Employer) when he sustained a compensable injury to his left knee and thigh.
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 procedures and the requested procedures are not consistent with the recommendations in the *ODG*.
4. An arthroscopic medial and lateral meniscal debridement, chondroplasty, limited synovectomy and lateral retinacular release of the left knee 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 an arthroscopic medial and lateral meniscal debridement, chondroplasty, limited synovectomy and lateral retinacular release of the left knee is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to an arthroscopic medial and lateral meniscal debridement, chondroplasty, limited synovectomy and lateral retinacular release of the left knee 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is:

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST
SUITE 300
IRVING, TX 75063-2732**

Signed this 25th day of August, 2009.

Carol A. Fougerat
Hearing Officer