MEDICAL CONTESTED CASE HEARING NO. 10027
M6-09-19063-01

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 September 9, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to arthroscopic anterior cruciate ligament (ACL) repair of the right knee for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by KS, attorney. Respondent/Carrier appeared and was represented by CK, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his right knee on _____. MRI showed partial thickness tear of the anterior cruciate ligament (ACL). Dr. M requested approval for arthroscopic ACL repair. The Carrier denied the request. The IRO doctor, a board certified orthopedic surgeon, upheld the denial.

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). 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 entry for anterior cruciate ligament (ACL) reconstruction provides :

> Recommended as indicated below. An examination of all studies that compared operative and conservative treatment of anterior cruciate ligament (ACL) rupture found that outcomes in the operative groups were generally better than in the conservative groups for younger patients, but outcomes are worse in older patients (age beyond 50-60 years). (Hinterwimmer, 2003) (Linko-Cochrane, 2005) Morbidity is lower for hamstring autografts than for patellar tendon autografts used for ACL reconstruction. (Biau, 2006) The use of bracing after anterior cruciate ligament (ACL) reconstruction cannot be rationalized by evidence of improved outcome including measurements of pain, range of motion, graft stability, or protection from injury. (Wright, 2007) Most of the roughly 100,000 ACL reconstructions performed each year are for younger patients. Although age has been considered a relative contraindication for ACL surgery in the past, active older patients may respond well to this surgery and should not be ruled out as surgical candidates based solely on their age. It is important to look at their comorbidities, e.g., malalignment and osteoarthritis, because they predict potential problems. (Wulf, 2008) Anterior cruciate ligament (ACL) reconstruction using an allograft has a high failure rate in young, active adults. While there are obvious benefits of using the cadaver ligament, like avoiding a second surgical site on the patient, a quicker return to work and less postoperative pain, for the young patient who is very active, it may not be the right choice. (Luber, 2008) In patients with ACL injury willing to moderate activity level to avoid reinjury, initial treatment without ACL reconstruction should be considered. All ACL-injured patients need to begin knee-specialized physical therapy early (within a week) after the ACL injury to learn more about the injury, to lower the activity level while performing neuromuscular training to restore the functional stability, and as far as possible avoid further giving-way or re-injuries in the same or the other knee, irrespectively if ACL is reconstructed or not. (Neuman, 2008) Patients with anterior cruciate ligament (ACL) injuries may not need surgery. At 2-5 years after injury, muscle strength and function were similar in patients treated with physical therapy and surgical reconstruction or physical therapy only. ACL injuries are associated with the development of osteoarthritis (OA) in the long term, and there is no evidence to suggest that reconstruction of the ACL prevents or reduces the rate of early-onset OA. On the contrary, the prevalence of OA may be even higher in patients with reconstructed ACL than in those with nonreconstructed ACL. (Ageberg, 2008)
>
> **ODG Indications for Surgery™ -- Anterior cruciate ligament (ACL) reconstruction:**
>
> **1. Conservative Care:** (This step not required for acute injury with hemarthrosis.) Physical therapy. OR Brace. PLUS
>
> **2. Subjective Clinical Findings:** Pain alone is not an indication for surgery. Instability of the knee, described as "buckling or give way". OR Significant effusion at the time of injury. OR Description of injury indicates rotary twisting or hyperextension incident. PLUS

3. Objective Clinical Findings (*in order of preference)*: Positive Lachman's sign. OR Positive pivot shift. OR *(optional)* Positive KT 1000 (>3-5 mm = +1, >5-7 mm = + 2, >7 mm = +3). PLUS
4. Imaging Clinical Findings: (Not required if acute effusion, hemarthrosis, and instability; or documented history of effusion, hemarthrosis, and instability.) Required for ACL disruption on: Magnetic resonance imaging (MRI). OR Arthroscopy OR Arthrogram.
(Washington, 2003) (Woo, 2000) (Shelbourne, 2000) (Millett, 2004)

The ODG doctor concluded that the request did not meet the ODG Indications for ACL surgery, observing that "(Claimant's) examination...does not truly make a case for demonstrable clinical instability that would warrant proceeding with surgical intervention in this 56 year old man who already has known degenerative changes in the knee." It was clear that the ODG criteria were not met. Dr. M testified they did not apply, because the ODG criteria were for ACL reconstruction, when the ligament was torn in two, not for ACL repair, when the ligament was partially torn or, as he put it, "loose". He explained that the surgery he wanted approved involved the placement of "suture anchors" near the end of the femur, then stitching the ligament to the suture anchors to tighten it. Dr. M did not identify any treatment guideline, scientific study, or textbook to support the medical necessity for the requested procedure. He did refer to some medical articles written by surgeons who performed this surgery (two of the articles were by him), discussing the results of the surgery in their patients. The distinction drawn by Dr. M between ACL reconstruction and repair does not appear in the ODG. Dr. B, an orthopedic surgeon, testified for the Carrier that the ODG entry in question applies to any surgery done to address an "incompetent" ACL.

There was no showing of evidence based medical evidence to overcome the IRO decision. Claimant is not entitled to the requested surgery.

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. On _____ Claimant sustained a compensable injury.

   D. The Independent Review Organization determined Claimant is not entitled to arthroscopic anterior cruciate ligament (ACL) repair of the right knee for the compensable injury of _____.

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. Claimant did not meet the ODG criteria for the requested procedure.

4. There was no showing of evidence based medical evidence to overcome the IRO decision.

5. Arthroscopic anterior cruciate ligament (ACL) repair of the right 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 arthroscopic anterior cruciate ligament (ACL) repair of the right knee is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to arthroscopic anterior cruciate ligament (ACL) repair of the right 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY**, 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, TEXAS 75063

Signed this 9th day of September, 2009.

Thomas Hight
Hearing Officer