MEDICAL CONTESTED CASE HEARING NO. 10037
M6-09-20771-01

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 21, 2009 to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to Achilles tendon repair for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by MP, Ombudsman. Carrier appeared and was represented by KM, attorney.

BACKGROUND INFORMATION

Claimant is a 55-year-old bus driver for (Employer) school district who injured his right heel while stepping down from a bus on _____. Claimant was found to have a near full thickness tear of the Achilles tendon at the calcaneal insertion. He underwent surgery with Dr. C on July 24, 2008 for tendon debridement and repair with right heel partial calcaneal osteotomy. Claimant continued to have problems through his conservative therapy with the right heel. Claimant underwent a repeat MRI on March 18, 2009 showing evidence of a partial tear of the Achilles tendon without retraction at the calcaneal insertion. Dr. C characterized this finding as being a possible tear versus an imaging change due to the previous surgical procedure. Dr. C noted the only remaining treatment he could offer would consist of another surgery with Achilles tenolysis and debridement, repair, and possible FLH tendon transfer and graft.

Carrier utilization reviewer Dr. B denied the requested procedure due to significant comorbidities including diabetes and obesity which would result in a less than ideal outcome. In response to Claimant's request for review, Dr. G noted that Dr. C admits that the MRI finding may be an artifact from the previous surgery rather than a new tear. He stated that the co-morbidities argue against additional surgery and denied authorization for the procedure. The case was reviewed at Claimant's request by an IRO reviewer who is a board certified orthopedic surgeon. This physician cited the ODG recommendations regarding surgery for Achilles tendon disorders. He noted that the MRI findings were equivocal as to a repeat tear, and that no complete tear was shown but findings were consistent with tendinosis. He pointed out that the records of the treating doctor showed an intact tendon with negative Thompson test, excellent strength and excellent motion. The IRO reviewer also acknowledged comorbid conditions of obesity, diabetes and deconditioning as being factors that would negatively affect a surgical outcome. Previous denials were upheld by the IRO.

DISCUSSION

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 provides as follows relating to Achilles tendon ruptures:

> Recommended as indicated below. Open operative treatment of acute Achilles tendon ruptures significantly reduces the risk of rerupture compared to non-operative treatment, but produces a significantly higher risk of other complications, including wound infection. The latter may be reduced by performing surgery percutaneously. Post-operative splintage in a functional brace appears to reduce hospital stay, time off work and sports, and may lower the overall complication rate. (Khan-Cochrane, 2004) Six months of nonsurgical therapy is appropriate for middle-aged patients or athletes with chronic Achilles tenosynovitis. Those that fail this treatment will improve with a limited debridement of diseased tissue without excessive soft tissue dissection of the tendon. Those patients who respond to nonoperative therapy tend to be younger than those who have degenerative tendon changes requiring surgery. (Johnston, 1997) Open operative treatment of acute Achilles tendon ruptures significantly reduces the risk of rerupture compared with nonoperative treatment, but operative treatment is associated with a significantly higher risk of other complications. Operative risks may be reduced by performing surgery percutaneously. Postoperative splinting with use of a functional brace reduces the overall complication rate. (Khan, 2005) Comparisons of surgically and nonsurgically treated Achilles tendon ruptures have demonstrated that those treated with surgery allow earlier motion and tend to show superior results. However, early motion enhances tendon healing with or without surgery and may be the important factor

in optimizing outcomes in patients with Achilles tendon rupture. This RCT supports early motion (progressing to full weightbearing at 8 weeks from treatment) as an acceptable form of rehabilitation in both surgically and nonsurgically treated patients with comparable functional results and a low rerupture rate. (Twaddle, 2007) Acute Achilles tendons ruptures may be managed either operatively or non-operatively. However, generally 6 weeks following a rupture a direct repair opposing the tendon ends becomes increasingly difficult. Over time, scar tissue forms, the muscles atrophy with disuse, and the tendon ends weaken. Chronic and neglected Achilles tendon ruptures are debilitating: their optimal management is surgical. (Carmont, 2007)

Surgery for Achilles tendon ruptures

Recommended as indicated below. Open operative treatment of acute Achilles tendon ruptures compared with non-operative treatment is associated with a lower risk of rerupture, but a higher risk of other complications including infection, adhesions and disturbed skin sensibility. Percutaneous repair compared with open operative repair was associated with a shorter operation duration, and lower risk of infection. (Khan-Cochrane, 2004) Six months of nonsurgical therapy is appropriate for middle-aged patients or athletes with chronic Achilles tenosynovitis. Those that fail this treatment will improve with a limited debridement of diseased tissue without excessive soft tissue dissection of the tendon. Those patients who respond to nonoperative therapy tend to be younger than those who have degenerative tendon changes requiring surgery. (Johnston, 1997) See also Achilles tendon ruptures.

Claimant has attached 5 journal articles which discuss the tendon transfer procedure proposed by Dr. C, as well as surgical treatment for Achilles tendinopathy or tendinosis. These articles do not take issue with the ODG recommendations concerning surgery for Achilles tendon rupture. The IRO reviewer cited the IRO provisions listed which indicate that surgery is recommended for repair of Achilles tendon rupture. In this case, the evidence did not unequivocally show that Claimant has an Achilles tendon rupture. Dr. C was the first to state that the area identified by the radiologist in the March 18, 2009 MRI may be a surgical artifact, and he admits that there is no full thickness tendon tear. In view of his findings that Claimant has an intact tendon with full function, strength and range of motion, it is evident that his recommendation of surgery is given solely to address Claimant's continued complaints of pain. Claimant has not shown by evidence based medical evidence that the IRO decision is incorrect.

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 injury on _____.

D. On July 1, 2009 the IRO determined that Claimant is not entitled to Achilles tendon repair for the compensable injury of _____.

E. This claim is a non-network claim.

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 IRO determined that the requested Achilles tendon repair surgery is inconsistent with the ODG treatment guidelines and that Carrier's denial of that procedure should be upheld.

4. Achilles tendon repair 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 Achilles tendon repair is not reasonably required medical treatment for the compensable injury of _____.

DECISION

Claimant is not entitled to Achilles tendon repair 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 **EAST TEXAS EDUCATIONAL INSURANCE ASSOCIATION** and the name and address of its registered agent for service of process is:

JEFF ADAMS
501A HIGHWAY 79N
FARMERSVILLE, TEXAS 75442

Signed this 23rd day of September, 2009.

Warren E. Hancock, Jr.
Hearing Officer