

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 1, 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 outpatient right ankle arthroscopy/debridement and loose body removal for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by SC, ombudsman. Petitioner/Provider, Dr. B, appeared by telephone as a witness in this matter. Carrier appeared by phone and was represented by Dr. W, adjuster.

BACKGROUND INFORMATION

Claimant sustained compensable injuries to her right knee and right ankle on _____. Claimant underwent a right knee arthroscopy on September 11, 2007. Subsequent to the surgery, her knee complaints decreased. However, she continued to complain of problems with her right ankle. Claimant underwent conservative treatment for her right ankle including physical therapy and home exercises. However, her complaints persisted. Based on her physical examination and subjective complaints, Dr. B recommended a right ankle arthroscopy and debridement with loose body removal.

After Dr. B requested pre-authorization for the surgical procedure, two utilization reviews were conducted. Both utilization reviews denied the request because the MRI did not show evidence of loose bodies and medical records submitted did not show clinical evidence of loose bodies. Dr. B appealed the carrier's decision to an IRO. The IRO upheld the carrier's denial and provided the same reason, no objective evidence of a loose body. In its denial of the surgery, The IRO specifically referenced the MRI performed on June 21, 2007 that did not show any indication of loose bodies. Dr. B appealed the decision of the IRO to a Medical Contested Case Hearing.

A Medical Contested Case Hearing was previously scheduled for April 27, 2009. The claimant appeared at the scheduled hearing, but the Respondent/Carrier did not appear. A ten day letter was sent to the carrier's representative, HW, and a response was received on May 11, 2009. The response indicated that Mr. HW was unable to attend the previously scheduled hearing due to a medical emergency. Good cause for Carrier's/Respondent's failure to appear was found, and Mr. HW response to the ten day letter was entered into evidence as Hearing Officer's Exhibit Number Three.

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."

In the present case, the ODG does not address the proposed surgical procedure. To overcome the decision of the IRO, the claimant presented the expert testimony of her orthopedic surgeon, Dr. B and a medical article from the Journal of the American Academy of Orthopaedic Surgeons 1196, 4:24-34 entitled "Ankle Arthroscopy: II. Indications and Results", by William B. Stetson, MD and Richard D. Ferkel, MD. The article contains the following information regarding loose bodies and ankle arthroscopy:

"Loose bodies may be of chondral or osteochondral origin and may be the result of significant or relatively minor trauma. Multiple loose bodies can occur with synovial chondromatosis or synovial osteochondromatosis. Loose bodies may float freely within the joint or may be fixed to synovium or scar tissue. The symptoms may vary but often result in catching or locking, swelling, pain, and decreased range of motion.

Unless the loose bodies contain bone, standard radiography and CT may miss them. Arthrograms may demonstrate loosened defects on the joint surfaces or defects caused by the loose body itself. Magnetic resonance imaging with the intra-articular injection of gadolinium may demonstrate an osseous or cartilaginous lesion that was not visualized with other imaging studies. It is important to localize the lesion preoperatively, whenever possible, to facilitate the surgical approach and removal. After the loose bodies have been retrieved, a careful evaluation of the joint surfaces should be performed to find their source. If a chondral or an osteochondral defect is found, it should be debrided."

Dr. B testified that he believed the claimant was a good candidate for an ankle arthroscopy precisely because her MRI was negative and she continues to complain of symptoms. Dr. B testified that an MRI is not conclusive evidence of the presence or absence of loose bodies in the ankle. He stated that whether the MRI would show loose bodies would depend on the amount of swelling in the ankle. Dr. B testified, and the medical records indicate, that during his clinical examinations of the claimant she continues to complain of pain and popping in her ankle. Dr. B stated and the medical records also indicate that the claimant has some swelling of the right ankle. Dr. B testified that the complained of symptoms are all clinical signs of loose bodies in the ankle. In addition to Dr. B's records, the designated doctor, Dr. T, also noted pain, swelling, and tenderness of the ankle when he examined the claimant on June 25, 2008. The claimant also testified that her ankle locks up and causes her to have difficulty driving. The claimant stated that she continues to have ankle pain despite having received physical therapy and medications for her symptoms.

Dr. B testified that the claimant met the criteria for an ankle arthroscopy not only due to his clinical judgment, but also based on the medical literature related to this procedure. In the journal article entitled, "Ankle Arthroscopy: II. Indications and Results", the criteria for an ankle arthroscopy are as follows: the doctor must take a careful history, including the mechanism of injury, perform a physical examination, and perform appropriate ankle and foot radiographs. If radiographs are negative and pain continues for greater than six months, then an MRI or CT scan is performed. If the MRI or CT scan is negative, then an arthroscopy is performed.

Dr. B testified that he has examined the claimant on multiple occasions and he has taken a complete history of the incident. He stated that the mechanism of injury is consistent with the diagnosis of loose bodies in the ankle. Dr. B testified and the medical records indicate that the claimant has had ankle and foot radiographs that are negative, her condition has been persistent for greater than six months, and her MRI is also negative. Dr. B's testimony supports the medical necessity of the ankle arthroscopy and he relies on medical literature in a recognized professional journal to support his opinion. The claimant has shown by a preponderance of evidence-based medicine that the requested ankle arthroscopy is health care reasonably required for the compensable injury.

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. The IRO determined that the Claimant should not have the outpatient right ankle arthroscopy/debridement and loose body removal.

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. Respondent did have good cause for failure to appear at the April 27, 2009 Medical Contested Case Hearing.
4. Outpatient right ankle arthroscopy/debridement and loose body removal 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 outpatient right ankle arthroscopy/debridement and loose body removal is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is entitled to outpatient right ankle arthroscopy/debridement and loose body removal for the compensable injury of _____.

ORDER

Carrier is 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 **TASB RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is:

**TASB RISK MANAGEMENT FUND
JAMES B. CROW, SECRETARY
12007 RESEARCH BLVD.
AUSTIN, TX 78759**

Signed this 8th day of September, 2009.

Jacquelyn Coleman
Hearing Officer