MEDICAL CONTESTED CASE HEARING NO. 10082
M6-10-21996-01

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 November 13, 2009 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a left knee arthroscopy/surgery with ACL and PCL reconstruction for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by TT, ombudsman.
Respondent/Carrier appeared and was represented by RM, attorney.

BACKGROUND INFORMATION

As a result of the compensable injury of _____, the claimant underwent a partial lateral meniscectomy and excision of the suprapatellar plica of the left knee on December 1, 2008. Due to cervical myelopathy and medical reports alleging that the claimant was experiencing bilateral weakness in the legs (giving way), the claimant underwent cervical surgery. The requesting doctor, Dr. J, requested the health care service of a left knee arthroscopy/surgery. Dr. J did not provide testimony, but reading from the totality of his medical reports, it appears that the claimant is experiencing his leg giving way and Dr. J's request would entail revision of the meniscus with reconstruction of the anterior cruciate ligament (ACL) and posterior cruciate ligament (PCL) to improve this problem. Although the left knee MRI dated February 19, 2009 appears to show an abnormal signal in the meniscal remnant and this would encompass one of the procedures that would be undertaken, the procedure is mostly requested for the reconstruction of the ACL and PLC. The medical records reveal a positive Lachman's test and some degree of effusion, but exhibit a good pivot shift. The records do not document hemarthrosis. The claimant underwent physical therapy after his partial meniscectomy. The Independent Review Organization (IRO) noted that there were inconsistent physical findings to support laxity in the ACL and PCL, that the etiology of the giving way episodes had not been determined with reliability, that there were MRI findings which suggest that the claimant's ACL and PCL are intact and therefore the criteria for ACL and PCL reconstructions have not been met.

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 qualified 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. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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 Official Disability Guidelines (ODG) provide the following as to reconstruction of the ACL:

> 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)

Anterior Cruciate Ligament diagnostic tests:

Recommended as indicated below. Diagnostic tests for assessing ruptures of the anterior cruciate ligament: The pivot shift test seems to have favorable positive predictive value, and the Lachman test has good negative predictive value. (Scholten, 2003) Based on predictive value statistics, it can be concluded that during the physical examination, a positive result for the pivot shift test is the best for ruling in an ACL rupture, whereas a negative result to the Lachman test is the best for ruling out an ACL rupture. It can also be concluded that, solely using sensitivity and specificity values, the Lachman test is a better overall test at both ruling in and ruling out ACL ruptures. The anterior drawer test appears to be inconclusive for drawing strong conclusions either way. (Ostrowski, 2006) See also Lachman test and Pivot shift test.

Posterior Cruciate Ligament:

Under study. Injuries of the posterior cruciate ligament (PCL) of the knee frequently occur in automobile accidents and sports injuries, although they are less frequent overall than injuries of the anterior cruciate ligament (ACL). Some

> patients show significant symptoms and subsequent articular deterioration, while others are essentially asymptomatic, maintaining habitual function. Management of PCL injuries remains controversial and prognosis can vary widely. Interventions extend from non-operative (conservative) procedures to reconstruction of the PCL, in the hope that the surgical procedure may have a positive effect in the reduction/prevention of future osteoarthritic changes in the knee. No randomized or quasi-randomized controlled studies were identified. (Peccin-Cochrane, 2005)

The claimant presented a copy of some articles regarding studies of ACL and PCL injuries and proposed treatment without an interpretation from a medical doctor to state the acceptance of such articles in the medical and scientific community. A review of the evidence reveals that there are insufficient findings to support the showing of overtly torn cruciate ligaments on the MRI and in the post operative report from the last surgical intervention and there is a lack of sufficient documentation as to the presence or absence of symptomatic instability of the knee following cervical spine surgery. Even were the MRI to be discounted, the ODG requires acute effusion, hemarthrosis and instability to be documented for an ACL reconstruction procedure, which has not been sufficiently documented up to this date. The ODG states that PCL injuries and their treatment are still under study. As such, the claimant has failed to present evidence based medical evidence to support his case regarding the requested procedure.

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).

2. Carrier delivered to Claimant and Provider 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 did not present evidence based medical evidence to support the need for left knee arthroscopy/surgery.

4. The left knee arthroscopy/surgery 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 the left knee arthroscopy/surgery is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to left knee arthroscopy/surgery 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 **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
701 BRAZOS ST., SUITE 1050
AUSTIN, TEXAS 78701-3232

Signed this 20th day of November, 2009.

Virginia Rodriguez -Gomez
Hearing Officer