

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.

ISSUE

A contested case hearing was held on December 2, 2009, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that left knee arthroplasty, debridement with chondroplasty and loose body traction is not health care reasonably required for the compensable injury of _____.

PARTIES PRESENT

Claimant appeared and was assisted by AT, ombudsman.
Carrier appeared and was represented by GT, attorney.

BACKGROUND INFORMATION

Claimant worked as the supervisor in charge of the dining room facilities. He slipped on ice in a walk-in freezer and injured his left knee. He had surgery in March 1997 and a second surgery in July 1997.

Claimant continued to have left knee symptoms. He had epidural steroid injections and took medication to manage the left knee pain.

In January 2009, Claimant's left knee symptoms became more symptomatic. Claimant was evaluated by an orthopedic surgeon in June 2009. Following a MRI of the left knee, the orthopedic surgeon recommended the medical procedure that is the subject of this hearing.

The Carrier denied the request for arthroscopic surgery and Claimant requested review by an Independent Review Organization (IRO). The IRO issued a decision dated September 29, 2009 upholding the Carrier's denial of the left knee arthroscopy. Claimant has requested review of the IRO decision by this Medical Contested Case Hearing.

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).

The ODG provisions for a Meniscectomy includes arthroscopic surgery as recommended in this case. The ODG provisions are as follows:

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.

The ODG provision for Chondroplasty are as follows:

ODG Indications for Surgery™ -- Chondroplasty:

Criteria for chondroplasty (shaving or debridement of an articular surface), requiring ALL of the following:

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. PLUS

4. Imaging Clinical Findings: Chondral defect on MRI

The IRO decision found that left knee arthroscopy with debridement and chondroplasty was not medically necessary. This decision, at least in part, was based on the reviewer's understanding of the ODG requirements. The Claimant seeks to overturn the IRO decision by offering a medical report from the requesting orthopedic surgeon. The surgeon noted that the recent MRI of the left knee revealed meniscal pathology, pretty significant chondral pathology

and possible loose bodies. Based on the MRI findings, he recommended arthroscopic debridement with chondroplasty, loose body traction and any other indicated procedure at the time of surgery.

The requesting orthopedic surgeon did not provide medical justification using the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based tests, and treatment and practice guidelines. The requesting surgeon did not address the ODG provisions or any other source of evidence-based medicine. His independent opinion without reference to evidence-based medicine does not provide sufficient justification to overturn the IRO decision.

I find that the preponderance of the evidence is not contrary to the IRO decision that left knee arthroplasty, debridement with chondroplasty and loose body traction is not health care reasonably required 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 _____, Claimant was the employee of (Employer).
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 decision found that left knee arthroplasty, debridement with chondroplasty and loose body traction is not health care reasonably required.
4. Claimant failed to establish evidence based medicine contrary to the decision of the IRO.
5. Left knee arthroplasty, debridement with chondroplasty and loose body traction 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 left knee arthroplasty, debridement with chondroplasty and loose body traction is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to left knee arthroplasty, debridement with chondroplasty and loose body traction 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 **HIGHLANDS INSURANCE COMPANY IN RECEIVERSHIP** and the name and address of its registered agent for service of process is:

**HIGHLANDS INSURANCE COMPANY IN RECEIVERSHIP
CHARLIE MILLER
10200 RICHMOND AVE., SUITE 175
HOUSTON, TX 77042**

Signed this 4th day of December, 2009.

Donald E. Woods
Hearing Officer