

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 25, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a right knee diagnostic and operative arthroscopy with lysis of adhesion and excision massive adhesion for the compensable injury of _____?

The hearing was recessed on September 25, 2009, in order to allow the treating doctor to testify on October 2, 2009. The doctor was not available on that date and the record was left open to allow the doctor to provide written testimony to both parties and the Hearing Officer. The record was closed on December 21, 2009, after both parties presented written closing arguments.

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by LG, attorney. Respondent/Carrier appeared and was represented by NM, adjuster.

BACKGROUND INFORMATION

Claimant testified that he was injured during the course and scope of employment when he was struck by a casing tong pipe and thrown backward while working in the oil field. Claimant testified that he was knocked on his back and his right knee struck a pipe. Claimant was transported to the (Emergency Room).

On July 3, 2008, Claimant underwent arthroscopy knee surgery by HJH M.D. Dr. H in his written statement explained that the Claimant sustained severe injuries to the structure of the right knee. Claimant's right knee had a large joint effusion and partial tears to many ligaments as well as osteoarthritis in the media femoral condyle. Claimant needed a walker to ambulate after his surgery and it was noted on August 19, 2008, that his knee had 25% range of motion, 50 degrees of flexion and he was using crutches to ambulate. Claimant was strongly urged to be compliant with his physical therapy.

Dr. H saw the Claimant on October 2, 2008. He noted that the Claimant had only improved his flexion by 7 degrees and could only attribute that fact to the Claimant being noncompliant with his physical therapy or that the therapist was unmotivated. Dr. H recommended that the Claimant undergo manipulation under a general anesthetic and probable arthroscopic

debridement of the considerable adhesions. The surgery and procedure was approved and accomplished on October 30, 2008.

Following the surgery and manipulation the Claimant was able to flex his knee to 100 degrees and was able to ambulate without any assistive device. Two weeks later, the Claimant had lost 40 degrees of flexion and lost 5 degrees of range of motion.

Claimant improved his right knee range of motion and degree of flexion by December, 2008. By January 20, 2009, Claimant had 104 degrees of flexion and minus 3 to 4 degrees from full flexion. On March 24, 2009, Claimant's condition had regressed. Claimant had only 60 degrees of flexion and had lost 5 degrees in extension.

Claimant testified that he wants to return to work and does not want to spend the rest of his life with a severe limp.

Dr. H states that in 30 years of performing arthroscopic procedures he has never seen the development of this much contracture and limitation of motion. He requested a repeat of essentially the same procedure he conducted on October 30, 2008.

The Carrier did not approve Dr. H's request for a second surgery. Dr. H appealed this denial on June 11, 2009, and the case was forwarded to an Independent Review Organization (IRO). The IRO reviewer is board certified in Orthopedic Medicine. On July 20, 2009, the IRO decision upheld the Carrier's denial of the requested surgery and procedure. Claimant appealed this Decision to a 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. 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 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 IRO reviewer relied on the following ODG provision for the proposed diagnostic arthroscopy:

ODG Indications for SurgeryTM -- Diagnostic arthroscopy:

Criteria for diagnostic arthroscopy:

1. **Conservative Care:** Medications. OR Physical therapy.
PLUS
2. **Subjective Clinical Findings:** Pain and functional limitations continue despite conservative care. PLUS
3. **Imaging Clinical Findings:** Imaging is inconclusive.

The IRO reviewer noted that the October 2, 2008, surgery met the requirements of the ODG but a repeat of the same failed procedure is not covered by the ODG or any other evidence based medicine. The IRO reviewer noted that the treating doctor failed to explain how the same requested surgery would be more efficacious and that there is documentation that the Claimant is not compliant with postoperative therapy. Claimant's evidence to overturn the IRO decision is based almost entirely on medical reports and records in evidence from Dr H.

Dr. H's response essentially agrees with the IRO reviewer's observations that the requested medical care is not covered by the ODG or any other evidenced-based medical evidence. Also, the evidence from Dr. H indicates the requested medical care is not covered by generally accepted standards of practice recognized in the medical community. The preponderance of the evidence is not contrary to the IRO decision that the requested medical care is not "health care reasonably required".

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 to his right knee.

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 Independent Review Organization determined that the Claimant should not have the requested procedure.
4. Another right knee diagnostic and operative arthroscopy with lysis of adhesion and excision massive adhesion 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 a right knee diagnostic and operative arthroscopy with lysis of adhesion and excision massive adhesion is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to another right knee diagnostic and operative arthroscopy with lysis of adhesion and excision massive adhesion 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 **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY,
701 BRAZOS SUITE 1050
AUSTIN, TX 78701**

Signed this 22nd day of December, 2009.

David A. Northup
Hearing Officer