

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 January 7, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to physical therapy two times per week for six weeks for the compensable left knee injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SS, ombudsman.
Respondent/Carrier was represented by RS, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable left knee injury on _____. Claimant suffered a lateral dislocation of the left patella. Claimant underwent a spontaneous reduction and a physical therapy program as a result of this injury. The Claimant continued to suffer from instability and lateral maltracking and, on July 3, 2009, Claimant underwent arthroscopic surgery with a reconstruction of the medial patellofemoral ligament using the gracilis tendon. Subsequent to the surgery, the Claimant continues to have quadriceps weakness but he has been able to regain 90 degrees of flexion and full extension. Claimant completed the post-operative regimen of physical therapy (11 sessions) and his treating doctor has recommended an additional 12 sessions of physical therapy. The request for additional therapy was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a board certified orthopedic surgeon, determined that the Claimant had received sufficient physical therapy in both the immediate and post-injury phase and in the post-operative phase to be appropriately educated. The IRO reviewer concluded that no further supervised physical therapy is warranted and that the Claimant could be transitioned to a home exercise program for further gradual restoration of the range of motion and muscle strength.

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 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."

ODG Physical Medicine Guidelines:

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

Dislocation of knee; Tear of medial/lateral cartilage/meniscus of knee; Dislocation of patella (ICD9 836; 836.0; 836.1; 836.2; 836.3; 836.5):

Medical treatment: 9 visits over 8 weeks

Post-surgical (Meniscectomy): 12 visits over 12 weeks

The *ODG* recognizes the role of physical therapy in the management of knee pain and it also describes the transfer of treatment from a passive program to a more active self-directed program. The recommendation in the ODG for physical therapy for the knee following a dislocation of the patella and subsequent surgery is 12 visits over 12 weeks. The Claimant was initially recommended to undergo 12 sessions of post-operative physical therapy and he completed 11 of these sessions. The Claimant's treating doctor recommended additional physical therapy, however, the request did not include a plan for self-directed home therapy. The Claimant testified that he is now doing home exercises and that he has recently joined a gym. The Claimant testified that he needs to improve the strength in his left knee with additional therapy; however, he failed to offer evidence based medical evidence to establish that the requested treatment exceeding ODG recommendations is healthcare reasonably required for the compensable injury. Based on the evidence presented, the Claimant did not meet his burden to present evidence based medicine evidence contrary to the IRO's determination.

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) when he sustained a compensable injury to his left 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 requested physical therapy two times per week for six weeks is not consistent with the recommendations in the *ODG*.
4. Physical therapy two times per week for six weeks is not health care reasonably required for the compensable left knee 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 physical therapy two times per week for six weeks is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to physical therapy two times per week for six weeks for the compensable left knee 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 **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TX 75201**

Signed this 11th day of January, 2010.

Carol A. Fougerat
Hearing Officer