

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 21, 2010 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 a left knee arthroscopic chondroplasty with possible synovectomy for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by JB, attorney.
Respondent/Carrier appeared and was represented by TW, attorney.

BACKGROUND INFORMATION

Claimant twisted his left knee at work on _____. An MRI performed on February 19, 2008 revealed a medial meniscus tear. Claimant was referred to Dr. H, a board certified orthopedic surgeon, for a surgical consult. Based on his physical examinations and the MRI findings, Dr. H recommended an arthroscopic surgery to repair the torn meniscus. Claimant underwent surgery on March 27, 2008. The arthroscopic procedure revealed that the claimant did not have a torn meniscus or any other tears in his left knee. Dr. H noted that the claimant's plica area was large and inflamed. Dr. H performed a plica resection. The medical records indicate that the claimant was 50% better with some residual pain and popping when he was released from Dr. H's care and allowed to return to work full duty on July 18, 2008.

Claimant testified that he was able to work after he was released from Dr. H's care, but over time his pain became worse, his knee was still popping and he noticed swelling. Claimant returned to Dr. H on June 10, 2009. Dr. H's examination revealed painful popping and tenderness in the patellar area. Dr. H noted that there was no effusion in the knee and no pain or tenderness in any other areas of the knee. However, based on Claimant's subjective complaints, Dr. H recommended a repeat MRI of the left knee. The MRI was performed on June 17, 2009 and it revealed only scar tissue in the area of the prior surgery. The MRI did not reveal any tears or chondromalacia of the left knee. Dr. H attempted conservative care, including medications and an injection. Claimant did not have long standing or significant improvement from conservative care. Therefore, Dr. H recommended a left knee arthroscopic chondroplasty with possible synovectomy.

Dr. H's request for arthroscopic surgery was reviewed by three utilization review agents. All three denied the request for the same reasons: (1) No objective clinical evidence of a chondral defect and (2) The MRI dated June 17, 2009 did not show any evidence of a chondral defect. Dr.

H appealed the Carrier's decision to an Independent Review Organization (IRO). The IRO upheld the carrier's denial. The IRO concluded that the requested medical treatment does not meet the Official Disability Guidelines (ODG) because the recent medical records do not reveal objective clinical findings of effusion, crepitus, or limited range of motion and the MRI does not reveal any chondral defects.

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. 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. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is 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. (Division Rule 133.308 (t).)

With regard to knee chondroplasty, the ODG provides as follows:

Recommended as indicated below. Not recommended as a primary treatment for osteoarthritis, since arthroscopic surgery for knee osteoarthritis offers no added benefit to optimized physical therapy and medical treatment. (Kirkley, 2008) See also Meniscectomy.

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
(Washington, 2003) (Hunt, 2002) (Janecki, 1998)

Claimant testified that he works long hours and the problems he is having with his left knee are affecting his ability to do his job. He states he has tried conservative treatment and it hasn't helped, so he now wants to have the surgery. Claimant presented an affidavit from his surgeon, Dr. H, along with Dr. H's medical records to meet his burden of proof. In his affidavit, Dr. H states that based on a reasonable degree of medical probability the surgery is medically necessary due to unrelenting pain in the patellofemoral joint associated with popping, an adequate period of non-operative treatment without response, his physical examination and Claimant's response to a single injection. Dr. H believed that Claimant would suffer long term damage to the knee without the surgery. Dr. H did not address the recommendations in the ODG for the chondroplasty and no evidence-based medical evidence was presented by the Claimant regarding the medical necessity for the requested procedure.

Dr. A testified on behalf of the Respondent/Carrier. Dr. A testified that the ODG criteria for a knee chondroplasty were not met because the MRI dated June 17, 2009 did not show any evidence of chondromalacia. Dr. A also noted that the arthroscopic procedure that was performed on March 27, 2008 would have revealed chondromalacia had it been present in the knee and it did not. Dr. A stated that there may be many other possible causes for the claimant's knee problems, including the previous surgery, and the ODG did not support the requested procedure.

Based on the evidence presented, the Claimant failed to meet his burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence. Claimant is not entitled to a left knee arthroscopic chondroplasty with possible synovectomy 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).
 - C. Claimant sustained a compensable injury on _____.
 - D. The IRO determined that the Claimant should not have a left knee arthroscopic chondroplasty with possible synovectomy.

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. A left knee arthroscopic chondroplasty with possible synovectomy 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 left knee arthroscopic chondroplasty with possible synovectomy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a left knee arthroscopic chondroplasty with possible synovectomy 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 **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755**

Signed this 22nd day of January, 2010.

Jacquelyn Coleman
Hearing Officer