

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 March 30, 2010 to decide the following disputed issue:

Is the preponderance of the evidence-based medicine contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to subchondral drilling/abrasion chondroplasty of the right knee for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared, and was assisted by Ombudsman SA; Carrier appeared, and was represented by Attorney WS. Petitioner, Dr. B, M.D. appeared by telephone.

BACKGROUND INFORMATION

Claimant sustained a compensable left knee injury on the date indicated. She described her symptoms and treatment to date, indicating that her condition has not improved with the conservative treatment modalities her providers have undertaken.

Dr. B, Claimant's surgeon, and Dr. VH, a doctor retained by Carrier, testified as to their opinions regarding Claimant's medical condition *vis á vis* the Official Disability Guidelines (ODG), set forth below. Regarding the requirement that a candidate for chondroplasty exhibit MRI evidence of a chondral defect, both doctors agreed that Claimant's MRI did not show a chondral defect; however, they disagreed as to what was shown in the photographs taken during an arthroscopic procedure performed in 2007, and whether the condition allegedly shown by those photographs should override a negative MRI study. Dr. B testified that the photographs showed a chondral defect, and Dr. VH testified that they did not.

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(22-a) 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, and 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. 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."

With regard to the proposed surgical procedures, the ODG states 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)

The IRO decision noted that Claimant met the first three of the four criteria set forth in the ODG; the parties' disagreement stemmed from a difference of medical opinion regarding the fourth requirement: a chondral defect revealed by an MRI study. In order to prevail, Petitioner and Claimant would need to demonstrate that Claimant's 2007 surgery revealed the requisite chondral defect, and that the results of arthroscopic procedures are considered to be superior to the results of MRI studies. Not only have Petitioner and Claimant presented no evidence-based medical studies to show that it is appropriate to disregard a negative MRI in favor of other evidence, but they have also failed to show that the photographs in question actually depict the required chondral defect. Given this evidentiary posture of the case, the Hearing Officer is of the opinion that the record of the Contested Case Hearing does not contain sufficient evidence to warrant overturning the decision of the IRO, and that a decision in favor of Carrier is therefore appropriate.

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. On _____, Claimant was employed by (Employer).
2. On _____, Employer subscribed to a policy of workers' compensation insurance issued by the SUA Insurance Company, Carrier.
3. On _____, Claimant's residence was located within seventy-five miles of the (City) field office of the Texas Department of Insurance, Division of Workers' Compensation.
4. 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.
5. On _____, Claimant sustained damage or harm to the physical structure of her body while she was within the course and scope of her employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.
7. Left knee subchondral drilling/abrasion chondroplasty 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-based medicine is not contrary to the decision of the Independent Review Organization that left knee subchondral drilling/abrasion chondroplasty is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to left knee subchondral drilling/abrasion chondroplasty 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 **SUA INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH SAINT PAUL STREET
DALLAS, TEXAS 75201**

Signed this 2nd day of April, 2010.

Ellen Vannah
Hearing Officer