

**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 July 27, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to an inpatient conversion of hemi-arthroplasty to revision of right total knee replacement for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant/Petitioner appeared and was assisted by RR, ombudsman.  
Respondent/Carrier appeared and was represented by BJ, attorney.

**BACKGROUND INFORMATION**

The Claimant/Petitioner (Claimant) sustained an injury to his right knee on \_\_\_\_\_ when he slipped on a wet floor and twisted his right knee. Claimant had previously undergone arthroscopic surgery to the right knee in 2006. In 2008, Claimant underwent a second right knee surgery including a partial knee replacement. On September 17, 2009, Claimant underwent an arthroscopy with chondroplasty and lateral release. Subsequent to the last surgery and post-surgical physical therapy, the Claimant has continued to complain of right knee pain and instability. Claimant's treating doctor recommended an inpatient conversion of hemi-arthroplasty to revision of right total knee replacement (total knee replacement). The request for this procedure was denied by the Carrier and referred to an IRO who determined that the request was not medically necessary at this time.

The IRO reviewer, a board certified orthopedic surgeon, noted that there was no submitted clinical documentation of independent radiographic reports that demonstrate worsening arthritis or joint space narrowing nor documentation of conservative care other than therapy. The IRO reviewer also noted that there was no submitted clinical documentation of hyaluronic acid or corticosteroid injections at this time. The IRO reviewer concluded that, in consideration of the records and facts presented, there is little supportive evidence to recommend overturning the prior denials for the requested procedure.

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 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 *ODG* recommends the following regarding the requested procedure:

**ODG Indications for Surgery™ -- Knee arthroplasty:**

**Criteria** for knee joint replacement (If only 1 compartment is affected, a unicompartmental or partial replacement may be considered. If 2 of the 3 compartments are affected, a total joint replacement is indicated.):

- 1. Conservative Care:** Medications. AND (Visco supplementation injections OR Steroid injection). PLUS
- 2. Subjective Clinical Findings:** Limited range of motion. AND Night time joint pain. AND No pain relief with conservative care. PLUS
- 3. Objective Clinical Findings:** Over 50 years of age AND Body Mass Index of less than 35, where increased BMI poses elevated risks for post-op complications. PLUS
- 4. Imaging Clinical Findings:** Osteoarthritis on: Standing x-ray. OR Arthroscopy.

The Claimant testified that he has undergone four surgeries to his right knee and that he has had some physical therapy. Claimant testified that he had injections to the right knee prior to the September 17, 2009 surgery but he has not had any injections post-surgery. The Claimant testified that he continues to suffer from right knee pain and "clicking" and that he wants to have the knee replacement so he can return to work. Dr. S, an orthopedic surgeon, testified that he did not believe that the total knee replacement was medically necessary at this time. Dr. S testified that the ODG recommends that, if two or three compartments of the knee are affected, a total joint replacement is indicated. Dr. S noted that the Claimant's right knee pathology is confined to only one compartment (patellofemoral joint) as evidenced by the MRI, the operative report and the medical records. Dr. H, Claimant's treating orthopedic surgeon, responded to the adverse determination in a letter dated May 10, 2010. Dr. H wrote that the Claimant has chondral changes and deterioration in the patellofemoral joint. This is consistent with Dr. S's testimony that the Claimant's right knee pathology is confined to one compartment, the patellofemoral joint.

Dr. S also noted that the Claimant had pre-surgery injections; however, the Claimant has not undergone any post-surgery injections and that conservative care has not been exhausted. Dr. H

confirmed that the Claimant had undergone several corticosteroid injections “after his most recent injury;” however, he did not address the fact that these injections were performed prior to the September 17, 2009 surgery. Dr. H concludes that the surgery is necessary but fails to address the concerns raised by the IRO or the ODG criteria recommended for the proposed procedure. Although Dr. S suggested that the Claimant may meet the requirements for a partial knee replacement, the Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO’s decision regarding the necessity of a total knee replacement. Therefore, Claimant has not met the requisite evidentiary standard required to overcome the IRO decision and the preponderance of the evidence is not contrary to the IRO’s determination that the Claimant is not entitled to an inpatient conversion of hemi-arthroplasty to revision of right total knee replacement 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 \_\_\_\_\_, the Claimant was the employee of (Employer) when he 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 Claimant failed to prove that he meets the requirements in the ODG for a total knee replacement and the requested procedure is not consistent with the recommendations in the ODG.
4. An inpatient conversion of hemi-arthroplasty to revision of right total knee replacement 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 an inpatient conversion of hemi-arthroplasty to revision of right total knee replacement is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to an inpatient conversion of hemi-arthroplasty to revision of right total knee replacement 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**RON O. WRIGHT, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TX 78723**

Signed this 28<sup>th</sup> day of July, 2010.

Carol A. Fougerat  
Hearing Officer