MEDICAL CONTESTED CASE HEARING NO. 10206
M6-10-26582-01

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 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 an outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/synovectomy for the compensable injury of _____?

PRESENT

Petitioner/Claimant appeared and was assisted by VU, ombudsman. Respondent/Carrier appeared and was represented by JT, attorney.

BACKGROUND INFORMATION

Claimant, a juvenile corrections officer, sustained a compensable bilateral knee contusion injury while restraining two offenders on _____. Claimant has not undergone surgery for the compensable injury. Claimant initially underwent conservative medical care that included pain medication and physical therapy. Claimant underwent a right knee MRI on April 21, 2009, that revealed that Claimant had a small joint effusion, trace edema in the prepatellar soft tissues, and early stages of osteoarthritic changes in the medial joint compartment of the right knee. The MRI further revealed that the menisci, anterior and posterior cruciate ligaments, extensor mechanism, and medial and lateral collateral ligament complexes were intact. Dr. Cr, D.O., is Claimant's treating doctor. Dr. Cr referred Claimant to Dr. Ch, M.D., for a surgical consultation. Dr. Ch, a board certified orthopedic surgeon, examined Claimant on August 3, 2009, and recommended that Claimant undergo an outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/synovectomy for the compensable injury.

Carrier's utilization review (UR) determined that the proposed right knee surgery for the compensable injury was not medically necessary, and denied Dr. Ch's request. Carrier's UR opined that Claimant did not meet the criteria of the Official Disability Guidelines (ODG) for an outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/synovectomy for the compensable injury. Carrier's UR noted that Claimant did not have a right knee meniscal tear or chondral defect according to the MRI, and that there was a lack of at least two of the objective clinical findings required under the ODG.

Claimant requested an IRO review. On April 28, 2010, the IRO reviewer, a board certified orthopedic surgeon, reviewed Claimant's medical records. The IRO reviewer determined that the outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/synovectomy for the compensable injury was not medically necessary, and cited the current

edition of the ODG concerning a meniscectomy and chondroplasty. The IRO reviewer determined that Claimant met the conservative care criteria under the ODG. The IRO reviewer further determined that Claimant did not meet at least two of the subjective clinical findings criteria, at least two of the objective clinical findings criteria, and the imaging clinical findings criteria for meniscectomy and chondroplasty under the ODG. The IRO reviewer noted that Claimant's imaging studies revealed that Claimant did not have a torn meniscus or chondral defect of the right knee as required under the imaging clinical findings criteria of the ODG. Claimant appealed the IRO decision. In accordance with Division Rule 133.308(t), Claimant, the appealing party of the IRO decision, had the burden of overcoming the IRO decision by a preponderance of evidence-based medical evidence.

DISCUSSION

Texas Labor Code §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."

The ODG cites the criteria for a meniscectomy and chondroplasty and provides as follows:

> "Recommended as indicated below for symptomatic meniscal tears. Not recommended for osteoarthritis (OA) in the absence of meniscal findings. (Kirkley, 2008) Meniscectomy is a surgical procedure associated with a high risk of knee osteoarthritis (OA). One study concludes that the long-term outcome of

meniscal injury and surgery appears to be determined largely by the type of meniscal tear, and that a partial meniscectomy may have better long-term results than a subtotal meniscectomy for a degenerative tear. (Englund, 2001) Another study concludes that partial meniscectomy may allow a slightly enhanced recovery rate as well as a potentially improved overall functional outcome including better knee stability in the long term compared with total meniscectomy. (Howell-Cochrane, 2002) The following characteristics were associated with a surgeon's judgment that a patient would likely benefit from knee surgery: a history of sports-related trauma, low functional status, limited knee flexion or extension, medial or lateral knee joint line tenderness, a click or pain noted with the McMurray test, and a positive Lachmann or anterior drawer test. (Solomon, 2004) Our conclusion is that operative treatment with complete repair of all torn structures produces the best overall knee function with better knee stability and patient satisfaction. In patients younger than 35, arthroscopic meniscal repair can preserve meniscal function, although the recovery time is longer compared to partial meniscectomy. Arthroscopy and meniscus surgery will not be as beneficial for older patients who are exhibiting signs of degenerative changes, possibly indicating osteoarthritis, and meniscectomy will not improve the OA. Meniscal repair is much more complicated than meniscal excision (meniscectomy). Some surgeons state in an operative report that they performed a meniscal repair when they may really mean a meniscectomy. A meniscus repair is a surgical procedure done to repair the damaged meniscus. This procedure can restore the normal anatomy of the knee, and has a better long-term prognosis when successful. However, the meniscus repair is a more significant surgery, the recovery is longer, and, because of limited blood supply to the meniscus, it is not always possible. A meniscectomy is a procedure to remove the torn portion of the meniscus. This procedure is far more commonly performed than a meniscus repair. Most meniscus tears cannot be treated by a repair. See also Meniscal allograft transplantation. (Harner, 2004) (Graf, 2004) (Wong, 2004) (Solomon-JAMA, 2001) (Chatain, 2003) (Chatain-Robinson, 2001) (Englund, 2004) (Englund, 2003) (Menetrey, 2002) (Pearse, 2003) (Roos, 2000) (Roos, 2001) Arthroscopic debridement of meniscus tears and knees with low-grade osteoarthritis may have some utility, but it should not be used as a routine treatment for all patients with knee osteoarthritis. (Siparsky, 2007) Arthroscopic surgery for knee osteoarthritis offers no added benefit to optimized physical and medical therapy, according to the results of a single-center, RCT reported in the *New England Journal of Medicine*. The study, combined with other evidence, indicates that osteoarthritis of the knee (in the absence of a history and physical examination suggesting meniscal or other findings) is not an indication for arthroscopic surgery and indeed has been associated with inferior outcomes after arthroscopic knee surgery. However, osteoarthritis is not a contraindication to arthroscopic surgery, and arthroscopic surgery remains appropriate in patients with arthritis in specific situations in which osteoarthritis is not believed to be the primary cause of pain. (Kirkley, 2008) Asymptomatic meniscal tears are common in older adults, based on studying MRI scans of the right knee of 991 randomly selected, ambulatory subjects. Incidental meniscal findings on MRI of the knee are common in the general population and increase with increasing age. Identifying a tear in a person with knee pain does not mean that the tear is the cause of the pain. (Englund, 2008) Arthroscopic meniscal repair results in good

clinical and anatomic outcomes. (Pujol, 2008) Whether or not meniscal surgery is performed, meniscal tears in the knee increase the risk of developing osteoarthritis in middle age and elderly patients, and individuals with meniscal tear were 5.7 times more likely to develop knee osteoarthritis. (Englund, 2009)

ODG Indications for Surgery™ -- Meniscectomy:
Criteria for meniscectomy or meniscus repair (Suggest 2 symptoms and 2 signs to avoid scopes with lower yield, e.g. pain without other symptoms, posterior joint line tenderness that could just signify arthritis, MRI with degenerative tear that is often false positive):
1. Conservative Care: (Not required for locked/blocked knee.) Physical therapy. OR Medication. OR Activity modification. PLUS
2. Subjective Clinical Findings (at least two): Joint pain. OR Swelling. OR Feeling of give way. OR Locking, clicking, or popping. PLUS
3. Objective Clinical Findings (at least two): Positive McMurray's sign. OR Joint line tenderness. OR Effusion. OR Limited range of motion. OR Locking, clicking, or popping. OR Crepitus. PLUS
4. Imaging Clinical Findings: (Not required for locked/blocked knee.) Meniscal tear on MRI.
(Washington, 2003)"

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 contended that she was entitled to the proposed right knee surgery for her compensable injury, and would be relying on the testimony of Dr. Ch. Dr. Ch testified that he was a board certified orthopedic surgeon, was familiar with the ODG, but that he did not have access to the ODG. Dr. Ch stated that he disagreed with the determination of the IRO reviewer. Without alluding to the specific numerical criteria as required under the ODG concerning meniscectomy and chondroplasty, Claimant elicited testimony from Dr. Ch as to which of the criteria under the ODG that Claimant did meet for a meniscectomy and chondroplasty. Dr. Ch acknowledged that Claimant did not have a meniscus tear or chondral defect according to the MRI. In regard to the meniscectomy, Dr. Ch confirmed that Claimant had undergone conservative care that included physical therapy, medication, and injections, and that Claimant's subjective clinical findings included joint pain, swelling, feeling of giving away, locking, clicking, and popping. Dr. Ch further confirmed through his testimony that Claimant's objective clinical findings included a positive McMurray's sign, joint line tenderness, and effusion, limited range of motion, locking, clicking, popping, and crepitus. Concerning the request for a chondroplasty, Dr. Ch stated that

Claimant had undergone conservative care, including medication and physical therapy, subjective clinical findings of joint pain and swelling, and objective clinical findings of effusion, crepitus, and limited range of motion. According to Dr. Ch, Claimant met criteria number one, two, and three of the ODG, but did not meet criteria number four of the ODG for a meniscectomy and chondroplasty.

Based on a careful review, fair reading, and consideration given to the evidence, Claimant did not provide evidence-based medical evidence that was sufficient to overcome the determination of the IRO. The preponderance of the evidence-based medical evidence is not contrary to the decision of the IRO that Claimant not entitled to an outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/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 the (Self-Insured), Employer.

   C. Claimant sustained a compensable bilateral knees contusion injury on _____.

   D. The Independent Review Organization determined that Claimant is not entitled to an outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/synovectomy for the compensable injury of _____.

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. Claimant met three of the four required criteria as outlined in the ODG for right knee meniscectomy and chondroplasty.

4. Claimant did not meet one out of the four required criteria under the ODG for right knee meniscectomy and chondroplasty.

5. Claimant did not provide evidence-based medical evidence that was sufficient to overcome the determination of the IRO.

6. The outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/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 Independent Review Organization that Claimant is not entitled to an outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/synovectomy for the compensable injury of _____.

DECISION

Claimant is not entitled to an outpatient right knee medial and lateral meniscectomy, chondroplasty, and removal of loose body/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 of _____, in accordance with Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **(a self-insured governmental entity),** and the name and address of its registered agent for service of process is

For service in person, the address is:

EXECUTIVE DIRECTOR
(SELF-INSURED)
(STREET ADDRESS)
(BUILDING, FLOOR)
(CITY), TEXAS (ZIP CODE)

For service by mail, the address is:

EXECUTIVE DIRECTOR
(SELF-INSURED)
(P.O. BOX)
(CITY), TEXAS (ZIP CODE)

Signed this 28th day of July, 2010.

Wes Peyton
Hearing Officer