MEDICAL CONTESTED CASE HEARING NO. 1029
M6-28710-01

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 September 29, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a right knee ACL reconstruction with allograft is health care reasonably necessary for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

Claimant sustained a right knee injury while employed by the (Self-Insured). Dr. F, MD, requested preauthorization for an Anterior Cruciate Ligament (ACL) reconstruction with allograft. Carrier refused to preauthorize the surgery and Claimant requested a review. The Texas Department of Insurance appointed (IRO) as the Independent Review Organization (IRO). On July 28, 2010, the IRO physician reviewer found that Carrier's denial should be overturned. Carrier appealed the IRO decision.

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 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 making decisions about the care of individual patients. 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. The ODG section on ACL reconstruction states:

> Anterior cruciate ligament (ACL) reconstruction
>
> Recommended as indicated below. An examination of all studies that compared operative and conservative treatment of anterior cruciate ligament (ACL) rupture found that outcomes in the operative groups were generally better than in the conservative groups for younger patients, but outcomes are worse in older patients (age beyond 50-60 years). (Hinterwimmer, 2003) (Linko-Cochrane, 2005) Morbidity is lower for hamstring autografts than for patellar tendon autografts used for ACL reconstruction. (Biau, 2006) The use of bracing after anterior cruciate ligament (ACL) reconstruction cannot be rationalized by evidence of improved outcome including measurements of pain, range of motion, graft stability, or protection from injury. (Wright, 2007) Most of the roughly 100,000 ACL reconstructions performed each year are for younger patients. Although age has been considered a relative contraindication for ACL surgery in the past, active older patients may respond well to this surgery and should not be ruled out as surgical candidates based solely on their age. It is important to look at their comorbidities, e.g., malalignment and osteoarthritis, because they predict potential problems. (Wulf, 2008) Anterior cruciate ligament (ACL) reconstruction using an allograft has a high failure rate in young, active adults. While there are obvious benefits of using the cadaver ligament, like avoiding a second surgical site on the patient, a quicker return to work and less postoperative pain, for the young patient who is very active, it may not be the right choice. (Luber, 2008) In patients with ACL injury willing to moderate activity level to avoid reinjury, initial treatment without ACL reconstruction should be considered. All ACL-injured patients need to begin knee-specialized physical therapy early (within a week) after the ACL injury to learn more about the injury, to lower the activity level while performing neuromuscular training to restore the functional stability, and as far as possible avoid further giving-way or re-injuries in the same or the other knee, irrespectively if ACL is reconstructed or not. (Neuman, 2008) Patients with anterior cruciate ligament (ACL) injuries may not need surgery. At 2-5 years after injury, muscle strength and function were similar in patients treated with physical therapy and surgical reconstruction or physical therapy only. ACL injuries are associated with the development of osteoarthritis (OA) in the long term, and there is no evidence to suggest that reconstruction of the ACL prevents or reduces the rate of early-onset OA. On the contrary, the prevalence of OA may be even higher in patients with reconstructed ACL than in those with nonreconstructed ACL. (Ageberg, 2008) Immediate surgical reconstruction may not be needed for ACL tears, according to the results of an RCT in the *New England Journal of Medicine*. Some patients who are not elite athletes can

function with an ACL-deficient knee, but it is difficult to predict which patients will have symptoms of instability that require surgery. (Frobell, 2010)

ODG Indications for Surgery™ -- Anterior cruciate ligament (ACL) reconstruction:

1. Conservative Care: (This step not required for acute injury with hemarthrosis.) Physical therapy. OR Brace. PLUS

2. Subjective Clinical Findings: Pain alone is not an indication for surgery. Instability of the knee, described as "buckling or give way". OR Significant effusion at the time of injury. OR Description of injury indicates rotary twisting or hyperextension incident. PLUS

3. Objective Clinical Findings (*in order of preference)*: Positive Lachman's sign. OR Positive pivot shift. OR *(optional)* Positive KT 1000 (>3-5 mm = +1, >5-7 mm = + 2, >7 mm = +3). PLUS

4. Imaging Clinical Findings: (Not required if acute effusion, hemarthrosis, and instability; or documented history of effusion, hemarthrosis, and instability.) Required for ACL disruption on: Magnetic resonance imaging (MRI). OR Arthroscopy OR Arthrogram.

(Washington, 2003) (Woo, 2000) (Shelbourne, 2000) (Millett, 2004)

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 IRO physician reviewer, in overturning Carrier's denial of an ACL reconstruction, stated that although Claimant did not meet the classical criteria for ACL reconstruction as listed in the ODG, because there was no gross instability in the knee, he felt it was reasonable and necessary because it would slow the progression of osteoarthritis and "possibly prevent the need for a total knee replacement in the future." This premise would seem to be at odds with the results of the randomized control trial by Ageberg, et al, cited by the ODG.

Carrier offered the testimony of Dr. P, MD, to rebut the IRO decision. Dr. P is the medical director of (Utilization Review Company), the utilization review company used by Carrier, and testified that he wrote the initial recommendation to deny preauthorization of the ACL reconstruction. Dr. P agreed with the IRO physician reviewer that Claimant's medical records do not document right knee instability. He testified that the purpose of an ACL reconstruction is to restore stability to the knee and, since there is no documented instability, the reconstruction serves no useful function and should not be performed.

In determining the weight to be given to the opinion of an expert, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See* Black vs. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999); E.I. Du Pont De Nemours and Company, Inc. v. Robinson, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; and (7) the experience and skill of

the person who applied the technique on the occasion in question. Kelly v. State, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. Black v. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999).

Dr. P is a board certified orthopedic surgeon and has been licensed to practice in Texas since 1969. His opinion on the requested surgery is based upon the recommendations and criteria in the ODG. Claimant offered a letter dated August 26, 2010, in support of the request for ACL reconstruction. In that letter, Dr. M, MD stated that Claimant did not report a twisting injury, but it is possible, that the MRI shortly after the injury showed moderate effusion, and that three doctors have recommended surgery. Dr. M did not address the ODG indications for surgery, or lack thereof, and did not address the lack of instability in the knee.

In light of the evidence presented in this matter, the hearing officer finds that the preponderance of the evidence is contrary to the IRO decision and a right ACL reconstruction with allograft is not reasonably required medical care 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. Claimant sustained a compensable injury on _____, while the employee of (Self-Insured), Employer.

   C. The compensable injury of _____, includes a medial meniscus tear, disruption of the anterior cruciate ligament and chondrocalcinosis.

   D. The Texas Department of Insurance appointed (IRO) as the IRO in this matter.

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 does not have documented instability of the right knee.

4. Due to the lack of documented instability, Claimant does not exhibit the indications for ACL reconstruction set out in the ODG.

5. A right knee ACL reconstruction with allograft is not reasonably required medical treatment 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 contrary to the decision of IRO that a right knee ACL reconstruction with allograft is reasonably required medical care for the compensable injury of _____.

DECISION

Claimant is not entitled to a right knee ACL reconstruction with allograft 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

Mailing Address
(P.O. BOX)
(CITY), TEXAS (ZIP CODE)

Physical Address
(STREET ADDRESS)
(OFFICE BUILDING)
(FLOOR)
(CITY), TEXAS (ZIP CODE)

Signed this 30th day of September, 2010.

KENNETH A. HUCHTON
Hearing Officer