

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 October 22, 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 a subtalar arthrodesis for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by AF, ombudsman.
Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant worked as a floor hand with the Employer's oilfield service company. On _____, Claimant was working with a pulling unit. He stepped off of the pump jack platform and injured his left ankle.

Claimant sought conservative treatment, but continued to have left ankle pain. In May 2006, Claimant had left ankle surgery to fuse the tibiotalar joint. Although the left ankle surgery resulted in a solid fusion, Claimant continues to have pain in the left ankle.

Claimant was evaluated by Dr. H in December 2009. Following additional testing, Dr. H has recommended a second left ankle fusion at the joint below the present fusion, the subtalar joint. This is the medical procedure that is the subject of this hearing. It is important to note that this present procedure is not a repair of a failed fusion, but is a procedure to fuse a separate joint in the left ankle. The initial left ankle fusion remains in place.

The Carrier denied Dr. H's request for a subtalar arthrodesis (fusion). Claimant requested review by an IRO. The IRO decision upheld the Carrier's denial and Claimant has requested this Medical Contested Case Hearing to review 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 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 Official Disability Guidelines (ODG).

This case is somewhat unusual in that both the IRO reviewer and the requesting doctor rely on the same provision of the ODG. That provision deals with an ankle fusion, which is the joint above the subtalar joint that we are dealing with in this case. The left ankle fusion is the procedure that Claimant had in 2006. Because both the IRO and the requesting doctor quote the ankle fusion criteria in the ODG, it is provided below:

ODG indications for surgery - - Ankle Fusion:

Criteria for fusion (ankle, tarsal, metatarsal) to treat non- or malunion of a fracture, or traumatic arthritis secondary to on-the-job injury to the affected joint:

1. Conservative Care: Immobilization, which may include: Casting, bracing, shoe modification, or other orthotics. OR Anti-inflammatory medications.

PLUS:

2. Subjective Clinical Findings: Pain including that which is aggravated by activity and weight-bearing. AND Relieved by Xylocaine injection. PLUS:

3. Objective Clinical Findings: Malalignment. AND Decreased range of motion. PLUS:

4. Imaging Clinical Findings: Positive x-ray confirming presence of: Loss of articular cartilage (arthritis). OR Bone deformity (hypertrophic spurring, sclerosis). OR Non- or malunion of a fracture. Supportive imaging could include: Bone scan (for arthritis only) to confirm localization. OR Magnetic Resonance Imaging (MRI). OR Tomography.

Procedures Not supported: Intertarsal or subtalar fusion.

The ankle fusion provisions of the ODG do not apply to a subtalar joint fusion as requested in this case. The ODG specifically states that a subtalar fusion procedure is not supported. Therefore, the Claimant and his doctor cannot use the ODG as justification to support the need for a subtalar fusion.

In this situation, where the ODG does not support the medical procedure requested, the Claimant has two choices. First, he can provide justification through other medical guidelines and medical studies that meet the evidence based medicine criteria. Second, if evidence based medicine is not available, the Claimant can present evidence of the generally accepted standards of medical practice recognized in the medical community. Claimant has done neither in this case.

Claimant has not presented evidence based medicine to support the medical procedure requested – a subtalar fusion. The preponderance of the evidence is not contrary to the decision of the IRO

that Claimant is not entitled to a subtalar arthrodesis 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).
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 sustained a left ankle compensable injury on _____.
4. Claimant had left ankle fusion surgery in May 2006.
5. Claimant's treating surgeon has requested a left ankle subtalar arthrodesis (fusion).
6. Claimant failed to present evidence based medicine to justify the need for the left ankle subtalar arthrodesis.
7. Left ankle subtalar arthrodesis 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 left ankle subtalar arthrodesis is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to left ankle subtalar arthrodesis 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 **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
211 E. 7TH STREET, SUITE 620
AUSTIN, TX 78701**

Signed this 28th day of October, 2010.

Donald E. Woods
Hearing Officer