

**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 November 3, 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 foot orthotics for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

Claimant sustained a compensable right knee injury on \_\_\_\_\_. Claimant underwent a right knee replacement in 1996 and right knee revision surgery in 2007. The Claimant's orthopedic surgeon, Dr. H, has prescribed foot orthotics for her shoe to increase dynamic loads onto the knee. Dr. H noted that the Claimant has been using orthotics which help her knee pain and that the molded arch supports give her improvement and relief of her knee symptomology. The request for orthotics was denied by the Carrier and referred to an IRO who determined that the recommended proposed medical device was not medically necessary.

The IRO reviewer, a board certified orthopedic surgeon, upheld the previous adverse determination stating that the only orthopedic notes were from a 2010 reference knee replacement. The IRO reviewer noted that there did not appear to be satisfactory documentation of lingering deformity which would satisfy the guidelines for recommended multiple inserts. The IRO reviewer concluded that the information provided did not satisfy the Official Disability Guidelines (ODG) for the proposed medical equipment and would not be medically necessary.

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 making decisions for 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. 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."

#### **ODG recommendations for insoles:**

Recommended as an option. Insoles can reduce pain among patients with knee OA. (Zhang, 2008) See also Walking aids; & Shoes. Increased joint loading significantly increases the risk of osteoarthritis progression, but is amenable to change using insoles or footwear, and insoles and footwear offer great potential as simple, inexpensive treatment strategies for knee osteoarthritis. (Hinman, 2009)

#### **Recommendations for lateral wedge insoles for medial knee osteoarthritis include:**

- (1) Wedge full length of foot not just heel.
- (2) Wedge tilt of around 5° as greater tilt (10°) is more likely to be associated with discomfort.
- (3) Addition of elastic subtalar strapping or ankle support may improve wedge effectiveness (but may also increase the likelihood of adverse effects and a larger shoe may be required to allow fitting).
- (4) Daily usage of 5-10 h may be optimal.
- (5) Wedges should be worn in shoes with flat heel and without medial arch supports.
- (6) Wedges should immediately reduce pain, if longer term clinical benefits are to be achieved.
- (7) Patients who achieve greatest benefits may include those who are younger, are less obese, have less severe disease and have greater lower limb lean muscle mass. (Hinman, 2009)

The Claimant testified that she has been prescribed orthotics consistently since the (year) injury to the right knee. The Claimant offered a letter dated August 8, 2005 from Dr. W, board certified in orthopedics, which states that he felt orthotic inserts for shoes as ordered by Dr. W were reasonable and necessary and related to the original injury. Dr. W noted that the Claimant states that the inserts help decrease the pain in her right knee a great deal. This opinion from Dr. W was rendered prior to the Claimant's 2007 revision surgery. Other than the September 22, 2010 progress note of Dr. H recommending the orthotics, the Claimant offered no additional medical

opinions regarding the necessity of the orthotics for the Claimant's right knee injury and the recommendations in the ODG. The Claimant has the burden of proof to overcome the IRO determination and the Claimant failed to present any evidence based medical opinion contrary to the determination of the IRO that the Claimant is not entitled to foot orthotics 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).
  - C. Claimant sustained a compensable injury to her right knee on \_\_\_\_\_.
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 does not meet the requirements in the ODG for foot orthotics and the requested medical equipment is not consistent with the recommendations in the ODG.
4. The Claimant failed to show that there is scientific and medical evidence formulated from credible scientific studies to support the use of orthotic inserts after a total knee replacement
5. The foot orthotics 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 the Claimant is not entitled to foot orthotics for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to foot orthotics 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TX 78701-3232**

Signed this 3rd day of November, 2010.

Carol A. Fougerat  
Hearing Officer