

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 January 13, 2011 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to an MRI without contrast for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by AG, layperson. Respondent/Carrier appeared and was represented by SS, attorney.

BACKGROUND INFORMATION

The Claimant testified that he was a Foundation Chef for the Employer since April 23, 2007. The Claimant sustained a compensable injury to his right knee on _____ and has undergone surgeries on July 8, 2009, December 2, 2009, and December 15, 2009. The Claimant had a pre-surgery MRI on June 12, 2009, and a post-surgery MRI on February 26, 2010. Dr. W was the orthopedic surgeon that performed these surgeries.

The Claimant continued to have problems with his right knee and his treating doctor, Dr. M (1), referred him to a second orthopedic surgeon, Dr. M (2). Dr. M (2) has requested another MRI without contrast of the right knee. This request was denied twice by the carrier's utilization review agents, because, *inter alia*, there were no plain x-rays of the knee obtained before the request and no documentation of physical therapy or rehabilitation. Their denial was upheld by the October 26, 2010 decision of the IRO, who noted that the Claimant had multiple surgeries and multiple MRI's and that another MRI was unlikely to further delineate the Claimant's problems. Claimant appealed the IRO decision to a medical contested case hearing.

DISCUSSION

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. 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 is 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."

With regard to a right knee MRI without contrast, the ODG provides as follows:

Recommended as indicated below. Soft-tissue injuries (meniscal, chondral surface injuries, and ligamentous disruption) are best evaluated by MRI. (ACR, 2001) See also ACR Appropriateness Criteria™. Diagnostic performance of MR imaging of the menisci and cruciate ligaments of the knee is different according to lesion type and is influenced by various study design characteristics. Higher magnetic field strength modestly improves diagnostic performance, but a significant effect was demonstrated only for anterior cruciate ligament tears. (Pavlov, 2000) (Oei, 2003) A systematic review of prospective cohort studies comparing MRI and clinical examination to arthroscopy to diagnose meniscus tears concluded that MRI is useful, but should be reserved for situations in which an experienced clinician requires further information before arriving at a diagnosis, and indications for arthroscopy should be therapeutic, not diagnostic in nature. (Ryzewicz, 2007) This study concluded that, in patients with nonacute knee symptoms who are highly suspected clinically of having intraarticular knee abnormality, magnetic resonance imaging should be performed to exclude the need for arthroscopy. (Vincken, 2007) In most cases, diagnosing osteoarthritis with an MRI is both unnecessary and costly. Although weight-bearing X-rays are sufficient to diagnose osteoarthritis of the knee, referring physicians and some orthopaedic surgeons sometimes use magnetic resonance imaging (MRI) either with or instead of weight bearing X-rays for diagnosis. For total knee arthroplasty (TKA) patients, about 95% to 98% of the time they don't need an MRI. Osteoarthritis patients often expect to be diagnosed with MRIs, and this demand influences MRI use. Average worker's compensation reimbursement is also higher for the knee MRI (\$664) than for the knee X-rays (\$136). (Goldstein, 2008) Repeat MRIs are recommended if need to assess knee cartilage repair tissue. In determining whether the repair tissue was of good or poor quality, MRI had a sensitivity of 80% and specificity of 82% using arthroscopy as the standard. (Ramappa, 2007)

Indications for imaging -- MRI (magnetic resonance imaging):

- Acute trauma to the knee, significant trauma (e.g. motor vehicle accident), suspect posterior knee dislocation.
- Nontraumatic knee pain, child or adolescent: nonpatellofemoral symptoms. Initial anteroposterior and lateral radiographs nondiagnostic (demonstrate normal findings or a joint effusion) next study if clinically indicated. If additional study is needed.
- Nontraumatic knee pain, child or adult. Patellofemoral (anterior) symptoms. Initial anteroposterior, lateral, and axial radiographs nondiagnostic (demonstrate normal findings or a joint effusion). If additional imaging is necessary, and if internal derangement is suspected.
- Nontraumatic knee pain, adult. Nontrauma, nontumor, nonlocalized pain. Initial anteroposterior and lateral radiographs nondiagnostic (demonstrate normal findings or a joint effusion). If additional studies are indicated, and if internal derangement is suspected.
- Nontraumatic knee pain, adult - nontrauma, nontumor, nonlocalized pain. Initial anteroposterior and lateral radiographs demonstrate evidence of internal derangement (e.g., Peligrini Stieda disease, joint compartment widening).
- *Repeat MRIs:* Post-surgical if need to assess knee cartilage repair tissue. (Ramappa, 2007)

The Claimant testified that the February 26, 2010 MRI was positive for scar tissue but did not find anything else. Noting that he has returned to work, the Claimant stated he can not lift the same heavy objects he has in the past because of his knee is not stable. The Claimant stated he has been changing braces over the years, but still has constant pain, difficulty walking, and he feels his knee “pop.”

The Claimant did not present any evidence-based medical evidence, and/or a qualified expert’s evidence-based medical opinion, to support the necessity of the procedure. The Claimant did not present any evidence-based medical evidence to overcome the IRO decision. Therefore, the IRO decision is upheld.

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. The Claimant sustained a compensable injury to his right knee on _____.
 - D. On _____, the Employer provided workers’ compensation insurance with Ace American Insurance Company.
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 IRO determined that the Claimant is not entitled to a right knee MRI without contrast.
4. The Claimant failed to present evidence based medicine to support the medical necessity of a right knee MRI without contrast.
5. MRI without contrast 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 MRI without contrast is not health care reasonably required for the compensable injury of _____.

DECISION

The Claimant is not entitled to a right knee MRI without contrast 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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C.T. CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 13th day of January, 2011.

David Paul Weston
Hearing Officer