

**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 March 21, 2011 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to a right knee arthrogram for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by PO, ombudsman. Respondent/Carrier appeared and was represented by DG, attorney.

**BACKGROUND INFORMATION**

Claimant suffered an injury to his right knee in the course and scope of his employment on \_\_\_\_\_. Dr. B requested an arthrogram of the right knee. Two utilization reviews were conducted. Both utilization reviews denied the requests. Claimant appealed the Carrier's decision to an Independent Review Organization (IRO). The IRO upheld the Carrier's denial noting, "The injured employee does not meet the ODG criteria for an MR Arthrogram of the right knee. All advance imaging studies to date have not reported any meniscal abnormalities." Based on these concerns, the IRO found that an MR Arthrogram is not reasonably required as per the guidelines. Claimant appealed the decision of the IRO 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 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. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered a party 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. (Division Rule 133.308 (t).)

With regard to knee arthrogram (MR arthrography), the ODG provides as follows:

Recommended for meniscal repair and meniscal resection of more than 25%. All patients with meniscal repair required MR arthrography. All patients with meniscal resection of more than 25%, who did not have severe degenerative arthrosis, chondral injuries, or avascular necrosis required MR arthrography. Patients with less than 25% meniscal resection did not need MR arthrography. (Magee, 2003)

To overcome the IRO's decision, Claimant's treating provider, Dr. R, D.C., testified that the ODG only addresses the use of an MR Arthrogram in cases where patients have meniscal injury. Dr. R further stated that the Claimant does not have a meniscal injury and that the treating surgeon requested the procedure to evaluate a different pathology. However, Dr. R did not identify the knee pathology to be addressed with the arthrogram, nor did he provide evidence-based medical evidence to show why an arthrogram is reasonably required for that pathology. He simply stated that because the type of knee pathology that the Claimant suffers from and the benefits of MR arthroscopy in its evaluation were not mentioned in the ODG, it should be approved.

Dr. R's testimony does not support the medical necessity of the MR Arthrography of the right knee. The Claimant has not shown by a preponderance of evidence-based medical evidence that the requested MR Arthrography of the right knee is health care reasonably required for the compensable injury.

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 on \_\_\_\_\_.
  - D. The Independent Review Organization determined that the requested services were not reasonable and necessary health care services 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. An arthrogram of the right knee 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 arthrogram of the right knee is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to an arthrogram of the right knee 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 **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7<sup>th</sup> STREET, SUITE 620  
AUSTIN, TEXAS 78701-3232**

Signed this 25<sup>th</sup> day of March, 2011.

Katherine D'Aunno-Buchanan  
Hearing Officer