

MEDICAL CONTESTED CASE HEARING NO 11150  
M6-11-31521-01

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

Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a left knee examination under anesthesia, arthroscopy, arthroscopic surgery and possible arthrotomy with saphenous nerve block and Marcaine block and an MRI of the left knee for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by KW, ombudsman. Respondent/Carrier appeared and was represented by PP, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to her left knee. Claimant's surgeon, Dr. S, M.D. (a board certified orthopedic surgeon), wants to perform a left knee examination under anesthesia, arthroscopy, arthroscopic surgery and possible arthrotomy with saphenous nerve block and Marcaine block. Carrier's URA doctors disagreed with the medical necessity of the surgery. The IRO interestingly agreed with Claimant's surgeon with the need for the surgery; but, he disagreed with the need for the blocks. The IRO doctor (a board certified orthopedic surgeon) stated, "[T]he saphenous nerve blocks and Marcaine block are difficult to correlate with the clinical and imaging findings." Claimant's surgeon testified the blocks are not separate treatment requested based upon the clinical and imaging findings – they are essential anesthetic required to aid in pain control recovery after the surgery. They are a standard of care in the community. Carrier's testifying expert (also a board certified orthopedic surgeon) disagreed with the medical necessity of the surgery due to the arthritic changes in Claimant's knee. He testified the arthritic changes -- be it arthritic, degenerative or post-traumatic -- are still arthritic changes making surgery contraindicated. He testified IF the surgery was found to be medically necessary (which he disagrees) that the blocks are necessary and part of the standard of care. He administers blocks differently than Claimant's surgeon is suggesting, but he testified Claimant's surgeon's approach is not wrong, only different than how he would do it.

Claimant's surgeon testified the left knee MRI is not needed as he already has a working MRI. He testified that request was added only because one of Carrier's review agents said he needed an MRI. The IRO doctor's decision was silent on the necessity of the MRI.

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. 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. (Division Rule 133.308 (t).)

Under the Official Disability Guidelines in reference to a left knee examination under anesthesia, arthroscopy, arthroscopic surgery and possible arthrotomy, the following recommendation is made:

ODG Indications for Surgery™ -- Meniscectomy:

Criteria for meniscectomy or meniscus repair (Suggest 2 symptoms and 2 signs to avoid scopes with lower yield, e.g. pain without other symptoms, posterior joint

line tenderness that could just signify arthritis, MRI with degenerative tear that is often false positive):

1. Conservative Care: (Not required for locked/blocked knee.) Physical therapy. OR Medication. OR Activity modification. PLUS
2. Subjective Clinical Findings (at least two): Joint pain. OR Swelling. OR Feeling of give way. OR Locking, clicking, or popping. PLUS
3. Objective Clinical Findings (at least two): Positive McMurray's sign. OR Joint line tenderness. OR Effusion. OR Limited range of motion. OR Locking, clicking, or popping. OR Crepitus. PLUS
4. Imaging Clinical Findings: (Not required for locked/blocked knee.) Meniscal tear on MRI.  
(Washington, 2003)

The Official Disability Guidelines do not make any comments about the use of saphenous nerve blocks and Marcaine blocks under the procedure summary for treatment of the knee/leg. This is understandable since, as the two testifying doctors explained, these blocks are not separate treatment but are a required part of the surgery.

Under the Official Disability Guidelines in reference to a left knee MRI, the following recommendation is made:

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

- Acute trauma to the knee, including significant trauma (e.g, motor vehicle accident), or if suspect posterior knee dislocation or ligament or cartilage disruption.
- 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)

Claimant presented expert medical testimony agreeing with the IRO doctor with the need for surgery. Carrier's doctor agreed with the Claimant's testifying doctor that the blocks (which as noted above are not discussed in the Official Disability Guidelines) are not treatment, are used for anesthetic purposes and are part of the standard of care in the community.

The IRO doctor agreed with the Claimant's doctor regarding the need for the requested surgery, based upon his clinical judgment and the Official Disability Guidelines. The two testifying doctors explained the medical necessity for the blocks. The greater weight of the credible evidence is contrary to the decision of the IRO in that the IRO doctor agreed with the need for the surgery. The testifying experts explained the blocks are medically necessary for pain control resulting from the surgery and are not treatment based upon clinical and imaging findings.

However, the initial request as presented to the IRO doctor was for the surgery with blocks and an MRI. The medical necessity for the MRI was not established. A decision cannot be made by separating procedures and finding for one while finding against another. See Medical Contested Case Hearing Decision No. 10170. Since the procedures in question were requested together, Claimant's inability to meet her burden of proof for both of these procedures equates to a failure to meet the requisite burden of proof to her whole case. It must therefore be determined Claimant failed to meet her burden of proof.

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 (Date of Injury), Claimant was the employee of (Self-Insured), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance as a Self-Insurer.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. The Independent Review Organization board certified orthopedic surgeon determined Claimant should not have a left knee examination under anesthesia, arthroscopy, arthroscopic surgery & possible arthrotomy with saphenous nerve block and Marcaine block and an MRI of the left knee.

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. A left knee examination under anesthesia, arthroscopy, arthroscopic surgery and possible arthrotomy with saphenous nerve block and Marcaine block and a left knee MRI is not health care reasonably required for the compensable injury of (Date of Injury).

### **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 a left knee examination under anesthesia, arthroscopy, arthroscopic surgery and possible arthrotomy with saphenous nerve block and Marcaine block and a left knee MRI is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to a left knee examination under anesthesia, arthroscopy, arthroscopic surgery and possible arthrotomy with saphenous nerve block and Marcaine block and a left knee MRI for the compensable injury of (Date of Injury).

### **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

**(SELF-INSURED)**  
**(STREET ADDRESS)**  
**(CITY), TX (ZIP CODE)**

Signed this 23rd day of June, 2011.

KEN WROBEL  
Hearing Officer