

MEDICAL CONTESTED CASE HEARING NO 11157
M6-11-3033-01

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 23, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a left ankle Brostrom/A1 decompression for the compensable injury (Date of Injury)?

PARTIES PRESENT

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

BACKGROUND INFORMATION

On (Date of Injury), Claimant sustained a compensable injury when he stepped on a pipe and twisted his left ankle. Claimant has had three hard casts, undergone physical therapy, has worn a walking boot, and currently wears a brace. Additionally, Claimant has had two MRI's to his left ankle: November 19, 2009 and April 6, 2010. Claimant has not had any surgery as a result of the compensable injury. Claimant's treating physician has recommended the left ankle Brostrom/A1 decompression. However, the request was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a Board Certified Orthopedic Surgeon, provided a review of the medical records, and noted that there was a "lack of objective evidence of ligamentous disruption on imaging studies and there was no definite evidence of clinical instability of the left ankle" for the requested procedure to 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 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*. 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."

It should be noted that the *ODG* does not specifically discuss a Brostrom/A1 decompression of the ankle, but does discuss lateral ligament ankle reconstruction surgery as follows:

Recommended as indicated below for Grade III¹ sprains. Operative treatment for severe ruptures of the lateral ankle ligaments leads to better results than functional treatment, and functional treatment leads to better results than cast immobilization for six weeks. (Pijnenburg, 2000) There was some evidence for a lower incidence of long-term ankle swelling in surgically treated patients. However, as well as tending to take longer to resume normal activities, including work, there was some limited evidence from a few trials for a higher incidence of ankle stiffness, impaired ankle mobility and complications in the surgical treatment group. (Kerhoffs, 2002) In view of the low quality methodology of almost all the studies, this review does not provide sufficient evidence to support any specific surgical intervention for chronic ankle instability. After surgical reconstruction for chronic lateral ankle instability, early functional rehabilitation was shown to be superior to six weeks immobilization regarding time to return to work and sports. (de Vries-Cochrane, 2006) This RCT concluded that, in terms of recovery of the preinjury activity level, the long-term results of surgical treatment of acute lateral ligament

rupture of the ankle correspond with those of functional treatment. Although surgery appeared to decrease the prevalence of reinjury of the lateral ligaments, there may be an increased risk for the subsequent development of osteoarthritis. (Pihlajamäki, 2010) According to this systematic review of treatment for ankle sprains, there is a role for surgical intervention in severe acute and chronic ankle injuries, but the evidence is limited. (Seah, 2011) See also Lateral ligament ankle reconstruction.

ODG Indications for Surgery™ -- Lateral ligament ankle reconstruction:

Criteria for lateral ligament ankle reconstruction for chronic instability or acute sprain/strain inversion injury:

1. **Conservative Care:** Physical Therapy (Immobilization with support cast or ankle brace & Rehab program). For either of the above, time frame will be variable with severity of trauma. PLUS
2. **Subjective Clinical Findings:** For chronic: Instability of the ankle. Supportive findings: Complaint of swelling. For acute: Description of an inversion. AND/OR Hyperextension injury, ecchymosis, swelling. PLUS
3. **Objective Clinical Findings:** For chronic: Positive anterior drawer. For acute: Grade-3 injury (lateral injury). [Ankle sprains can range from stretching (Grade I) to partial rupture (Grade II) to complete rupture of the ligament (Grade III).1 (Litt, 1992)] AND/OR Osteochondral fragment. AND/OR Medial incompetence. AND Positive anterior drawer. PLUS
4. **Imaging Clinical Findings:** Positive stress x-rays identifying motion at ankle or subtalar joint. At least 15 degree lateral opening at the ankle joint. OR Demonstrable subtalar movement. AND Negative to minimal arthritic joint changes on x-ray.

Procedures Not supported: Use of prosthetic ligaments, plastic implants, calcaneous osteotomies.

(Washington, 2002) (Schmidt, 2004) (Hintermann, 2003)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

Claimant relied on his testimony and various medical reports in support of his position that the recommended procedure is reasonable and necessary. However, Claimant failed to provide the opinion of a qualified expert, relying on evidence-based medicine, to rebut the determination of the IRO. Based on the evidence presented, Claimant did not meet his burden to present evidence-based medicine evidence contrary to the IRO's determination.

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 (Employer).
 - C. On (Date of Injury), Claimant sustained a compensable injury.
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 requested services were not reasonable and necessary health care services for the compensable injury of (Date of Injury).
4. Claimant failed to present evidence based medical evidence contrary to the IRO decision.
5. A left ankle Brostrom/A1 decompression 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 ankle Brostrom/A1 decompression is not healthcare reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a left ankle Brostrom/A1 decompression 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA**, and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 28th day of June, 2011.

Teresa G. Hartley
Hearing Officer