

MEDICAL CONTESTED CASE HEARING NO 12012
M6-11-34975-01

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 August 22, 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 1 left ankle scope, brostrom procedure and peroneal tendon debridement between April 27, 2011 and June 26, 2011 for the compensable injury of (Date of Injury)?

Upon agreement of the parties, the issue was amended as follows:

Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to 1 left ankle scope, brostrom procedure and peroneal tendon debridement for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by JL, attorney.
Respondent/Carrier appeared and was represented by JF, attorney.

BACKGROUND INFORMATION

The claimant sustained a compensable injury to the left ankle. The claimant underwent physical therapy for her compensable injury. Dr. G requested the claimant undergo a left ankle scope, a brostrom procedure and peroneal tendon debridement for lateral ligament reconstruction due to ankle instability. Upon utilization review, the request was denied and again denied upon reconsideration. The utilization review agents noted that although the claimant had undergone physical therapy, pain medications given were not included for review and there was no mention of injection therapy as part of the conservative regimen. In short, the denials at this level were based upon minimal objective documentation of the claimant's failure to respond to conservative treatment. Upon independent review, a board certified orthopedic surgeon reviewed the request and upheld the previous denials. In its report, the IRO noted that the Official Disability Guidelines (ODG) require objective clinical findings of a positive anterior drawer sign and positive stress x-rays of at least 15 degrees of lateral opening of the ankle joint. The IRO reasoned that as there was no clinical documentation of stress x-rays showing at least 15 degrees

lateral opening of the ankle joint and subtalar joint movement was not demonstrable upon clinical note, the claimant failed to meet the criteria listed in the ODG for the requested procedure.

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 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 (sic) 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."

The ODG cites the following as to surgery for lateral ligament reconstruction:

Recommended as indicated below. 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. Surgical treatment comprised suture repair of the injured

ligament(s) within the first week after injury, and a below-the-knee plaster cast was worn for six weeks with full weightbearing. Functional treatment consisted of the use of an Aircast ankle brace for three weeks. (Pihlajamäki, 2010) See also Surgery for ankle sprains.

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, calcaneus osteotomies.

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

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

The claimant did not present a written medical opinion or the oral testimony of a doctor to support her request. The carrier presented two different peer review doctors' opinions, which state that they concur with designated doctor, Dr. S, who stated that surgery would be contraindicated due to the claimant's comorbid condition of obesity. These peer review doctors added that as the claimant is slightly over five feet tall and weights 300 pounds, surgery would be compromised by this condition and should surgery fail and further tear occur, it would make reconstruction almost impossible. Dr. DG who referred the claimant out to Dr. G also noted that he did not see signs of ligamentous instability on his examination and did not believe lateral ligamentous repair or reconstruction would improve the claimant's condition. The claimant has failed to meet the criteria set out in the ODG for the requested procedure and has not presented other evidence-based medical evidence to overcome the determination of the IRO.

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), Employer and sustained a compensable injury.
 - C. The IRO determined that the claimant is not entitled to one left ankle scope, brostrom procedure and peroneal tendon debridement for the compensable injury of (Date of 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 claimant did not present evidence-based medical evidence to overcome the determination of the IRO.
4. One left ankle scope, brostrom procedure and peroneal tendon debridement 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 one left ankle scope, brostrom procedure and peroneal tendon debridement is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to one left ankle scope, brostrom procedure and peroneal tendon debridement 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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Signed this 23rd day of August, 2011.

Virginia Rodriguez-Gomez
Hearing Officer