

MEDICAL CONTESTED CASE HEARING NO 12032
M6-11-34982-01

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 October 18, 2011 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a left knee arthroscopy with meniscectomy for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner, Dr. B, appeared by telephone on his own behalf. Claimant appeared and was assisted by PO, ombudsman. Respondent/Self-Insured Carrier appeared and was represented by DP, attorney.

BACKGROUND INFORMATION

On (Date of Injury), Claimant was working as a motorcycle patrol officer for the (Self-Insured). Claimant was involved in a motor vehicle collision on his way to the scene of an accident. Claimant's motorcycle was rear-ended by a truck. He was thrown from his motorcycle and he landed on the asphalt. Claimant sustained injuries to his cervical spine, lumbar spine, right shoulder, and left knee.

An MRI of the left knee that was performed on December 13, 2010 revealed a subtle type II degenerative signal in the posterior horn of the medial meniscus. Claimant received chiropractic care and underwent conservative treatment under the care of Dr. P. Dr. P referred Claimant to Dr. B for an orthopedic consultation. Dr. B examined Claimant on January 18, 2011. Based upon his physical examination and Claimant's subjective complaints, Dr. B diagnosed a possible meniscus tear in the left knee and recommended continued conservative care for Claimant's left knee. Claimant underwent a corticosteroid injection and physical therapy for his left knee. Once Claimant had exhausted all conservative care but he remained symptomatic, Dr. B recommended a left knee arthroscopy with meniscectomy.

Dr. B's request for surgery was denied by the Self-Insured Carrier's Utilization Review Agents

(URAs.). Dr. B appealed the Self-Insured Carrier's decision to an Independent Review Organization (IRO) that upheld the Self-Insured Carrier's decision. The IRO stated that the ODG requires conservative treatment, subjective clinical findings, objective clinical findings, and imaging clinical findings. The IRO stated that Claimant met three of the four criteria for the surgery. However, the findings listed on the MRI did not qualify as a meniscus tear. Therefore, Claimant did not meet the qualifications for the proposed procedure. Dr. B appealed the IRO's 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 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 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 meniscectomy, the ODG lists the following criteria:

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)

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

With regard to diagnostic arthroscopy, the ODG lists the following criteria:

ODG Indications for Surgery™ -- Diagnostic arthroscopy:

Criteria for diagnostic arthroscopy:

1. **Conservative Care:** Medications. OR Physical therapy. PLUS
2. **Subjective Clinical Findings:** Pain and functional limitations continue despite conservative care. PLUS
3. **Imaging Clinical Findings:** Imaging is inconclusive.

(Washington, 2003) (Lee, 2004)

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

Petitioner and Claimant assert that the medical records, the testimony of Dr. B, and the report of Dr. M support their position that the proposed surgical procedure is medically necessary.

Dr. B, a board certified orthopedic surgeon, testified that Claimant meets the ODG criteria for surgery based upon his physical examination findings and Claimant's lack of improvement with conservative care. Dr. B noted that Claimant complained of popping and locking in his knee and a loose sensation. Dr. B testified, and his medical records indicate, that Claimant's physical examination revealed a positive McMurray's sign. Dr. B testified that Claimant has received non-operative conservative care that provided temporary relief. Dr. B acknowledged that the MRI did not reveal clear cut evidence of a meniscus tear. He stated that the MRI results were not normal and Claimant's results represented a borderline case. Dr. B testified that MRIs are not 100% accurate and that with the arthroscopic procedure he will be able to see the pathology that is causing the symptoms.

Dr. M, orthopedic surgeon, examined Claimant on September 22, 2011 for a required medical examination. Dr. M was asked to determine if the left knee condition was related to the original injury and to determine if surgery is medically necessary. Dr. M opined that Claimant is a candidate for an arthroscopic evaluation of his left knee. Dr. M also acknowledged that there was no clear cut evidence of a meniscal tear or loose body per se, but stated that Claimant has symptoms consistent with internal derangement. Dr. M stated that Claimant has tried conservative care and failed. He stated Claimant's effusion is an indication of ongoing pathology in the left knee. Dr. M believes that the arthroscopic surgery will reveal evidence of a chondral lesion or chondral flap, or a loose piece of cartilage, or a possible meniscus tear that can be corrected with arthroscopic surgical intervention.

A review of the medical evidence supports Petitioner's and Claimant's position that he meets the criteria for a diagnostic arthroscopic procedure. However, all of the ODG requirements for meniscectomy are not met in this case. Specifically, the fourth criteria, evidence of a meniscal tear on the MRI, is not met. Since all of the ODG requirements for the requested procedure have not been met and since no other evidence-based medicine was put forth in support of the necessity of the proposed procedure, Claimant has failed to prove that the preponderance of the evidence based medical evidence is contrary to the IRO decision.

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. Claimant sustained a compensable injury on (Date of Injury).
 - E. The Independent Review Organization determined that Claimant is not entitled to a left knee arthroscopy with meniscectomy for the (Date of Injury) compensable injury.
2. Self-Insured Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Self-Insured Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. A left knee arthroscopy with meniscectomy 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 arthroscopy with meniscectomy is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a left knee arthroscopy with meniscectomy for the compensable injury of (Date of Injury).

ORDER

Self-Insured 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), TEXAS (ZIP CODE)**

Signed this 31st day of October, 2011.

Jacquelyn Coleman
Hearing Officer