

MEDICAL CONTESTED CASE HEARING NO 12064
M6-12-37605-01

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 January 23, 2012 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to an arthroscopy of the right knee with lateral release for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman.

Respondent/Carrier was represented by RJ, attorney, who appeared by telephone.

BACKGROUND INFORMATION

Claimant testified that he was injured during the course and scope of employment. He could not stand up from a kneeling position after fixing a flat on (Date of Injury). When a driver helped him get up, Claimant's right knee popped and was swollen. Emergency room personnel, Dr. Z, and Dr. H have treated Claimant.

Documentary evidence of September 16, 2011 shows that Dr. H requested preauthorization to perform surgery on Claimant's knee. The surgery was described as arthroscopy/lateral release/incision of patellar tendon. In October of 2011, Drs. Trotter and Smith, utilization reviewers, denied the request, writing that the requested surgery did not meet requirements of the *Official Disability Guidelines* (ODG). On November 7, 2011, a reviewer for the Independent Review Organization (IRO) upheld the denials.

According to documentary evidence, the reviewer for the IRO is a medical doctor who is board certified in orthopedic surgery and who relied on the reviewer's own medical judgment and the ODG in making a determination. The reviewer commented that Claimant's medical documentation did not note that an x-ray, computed tomography, or magnetic resonance imaging demonstrated abnormal patellar tilt. The reviewer wrote that such documentation was a requirement of the ODG.

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 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."

The ODG provides the following for diagnostic arthroscopy:

Recommended as indicated below. Second look arthroscopy is only recommended in case of complications from OATS or ACI procedures, to assess how the repair is healing, or in individual cases that are ethically defensible for scientific reasons, only after a thorough and full informed consent procedure. (Vanlauwe, 2007) In patients with osteoarthritis, the value of MRI for a precise grading of the cartilage is limited, compared to diagnostic arthroplasty. When the assessment of the cartilage is crucial for a definitive decision regarding therapeutic options in patients with osteoarthritis, arthroscopy should not be generally replaced by MRI. The diagnostic values of MRI grading, using arthroscopy as reference standard,

were calculated for each grade of cartilage damage. For grade 1, 2 and 3 lesions, sensitivities were relatively poor, whereas relatively better values were noted for grade 4 disorders. (von Engelhardt, 2010)

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).

The ODG provides the following for lateral retinacular release:

Recommended as indicated below.

ODG Indications for Surgery™ -- Lateral retinacular release:

Criteria for lateral retinacular release or patella tendon realignment or maquet procedure:

- 1. Conservative Care:** Physical therapy (not required for acute patellar dislocation with associated intra-articular fracture). OR Medications. PLUS
- 2. Subjective Clinical Findings:** Knee pain with sitting. OR Pain with patellar/femoral movement. OR Recurrent dislocations. PLUS
- 3. Objective Clinical Findings:** Lateral tracking of the patella. OR Recurrent effusion. OR Patellar apprehension. OR Synovitis with or without crepitus. OR Increased Q angle >15 degrees. PLUS
- 4. Imaging Clinical Findings:** Abnormal patellar tilt on: x-ray, computed tomography (CT), or MRI.

(Washington, 2003) (Fithian, 2004) (Aderinto, 2002) (Naranja, 1996) (Radin, 1993)

Claimant argued that requirements of the ODG were met. Claimant, though, failed to present evidence based medical evidence to show that he met the criteria referred to by the reviewer for the IRO. Claimant did not present evidence based medical evidence that was contrary to the decision 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) Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant, who was the employee of (Employer), sustained a compensable injury.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Liberty Mutual Fire Insurance Company.
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 arthroscopy of the right knee with lateral release 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) Office.
3. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that Claimant is not entitled to an arthroscopy of the right knee with lateral release is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an arthroscopy of the right knee with lateral release 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
211 E. 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 27th day of January, 2012.

CAROLYN F. MOORE
Hearing Officer