

MEDICAL CONTESTED CASE HEARING NO 12086
M6-12-38089-01

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.

ISSUE

A contested case hearing was held on February 27, 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 outpatient right knee chondroplasty and lateral retinacular release for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared, and was assisted by Ombudsman RB; Carrier appeared, and was represented by Attorney "R" T.

BACKGROUND INFORMATION

Claimant, a corrections officer with the Texas Youth Commission, sustained the knee injury made the basis of this case while she was attempting to prevent a fight between two youths.

Claimant described the course of her symptoms and treatment, indicating that she eventually was referred to an orthopedic specialist, who has recommended the proposed surgery which Claimant wishes to undergo

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(22-a) 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(18-a) 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, and 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. 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 [a party] 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 chondroplasty and lateral retinacular release, the ODG states as follows, respectively:

Recommended as indicated below. Not recommended as a primary treatment for osteoarthritis, since arthroscopic surgery for knee osteoarthritis offers no added benefit to optimized physical therapy and medical treatment. (Kirkley, 2008) See also Meniscectomy.

ODG Indications for Surgery™ -- Chondroplasty:

Criteria for chondroplasty (shaving or debridement of an articular surface), requiring ALL of the following:

- 1. Conservative Care:** Medication. OR Physical therapy. PLUS
- 2. Subjective Clinical Findings:** Joint pain. AND Swelling. PLUS
- 3. Objective Clinical Findings:** Effusion. OR Crepitus. OR Limited range of motion. PLUS
- 4. Imaging Clinical Findings:** Chondral defect on MRI (Washington, 2003) (Hunt, 2002) (Janecki, 1998)

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

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)

Both of the proposed procedures require positive MRI findings which Claimant does not exhibit. As one may not infer the existence of pathology warranting surgical intervention, as Claimant's surgeon has suggested, and as no evidence-based medical evidence has been presented to overcome the ODG, it is appropriate to determine that Claimant is not entitled to the treatment in question.

Even though all the evidence presented may not have been discussed in detail, it was considered; the Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. On (Date of Injury), Claimant was employed by the (Employer), Employer.
2. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance issued by the (Carrier), Carrier.
3. On (Date of Injury), Claimant's residence was located within seventy-five miles of the (City) office of the Texas Department of Insurance, Division of Workers' Compensation.
4. 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 1.
5. On (Date of Injury), Claimant sustained damage or harm to the physical structure of her body while she was within the course and scope of her employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.
7. An outpatient right knee chondroplasty and lateral retinacular release is not health care reasonably required for Claimant's 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-based medicine is not contrary to the decision of the Independent Review Organization that an outpatient right knee chondroplasty and lateral retinacular release is not health care reasonably required for Claimant's compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an outpatient right knee chondroplasty and lateral retinacular release for her 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 the **(SELF-INSURED)**.

If service of process is made by mail, the name and address of its registered agent for service of process is

JB
(ADDRESS)
(CITY) (STATE) (ZIP CODE)

If service of process is made in person, the address of its registered agent for service of process is

300 W. 15TH STREET, 6TH FLOOR
AUSTIN, TEXAS 78701

Signed this 5th day of March, 2012.

Ellen Vannah
Hearing Officer