

MEDICAL CONTESTED CASE HEARING NO. 12123
M6-12-39710-01

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 medical contested case hearing was held on July 10, 2012, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO orthopedic surgeon that Claimant is not entitled to left knee arthroscopy and/or other procedures as may be found necessary for the compensable injury of (City)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by JC, attorney. Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

On (City), Claimant was hopping off a skid package about 5½ feet to the ground. His body went one way and his knees went the other. His left knee swelled immediately. He ultimately had surgery on October 18, 2010. His knee did not recover from the surgery and he has had continued, documented complaints since that time. Claimant had a pre-surgery MRI, arthroscopic surgery and post-surgery MRI that did not show any ACL tears. Claimant's doctor, JM, M.D. wants to do another arthroscopy because, as he testified, he will find a posterolateral bundle of tears of the ACL that would not show on MRI. Carrier's doctor, MD, M.D., acknowledges Claimant's knee is not well but he suggests another MRI before scoping Claimant's knee. The IRO orthopedic surgeon agreed with the Carrier that an arthroscopy of the left knee is not 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. 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. 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. (Division Rule 133.308 (t).)

Under the Official Disability Guidelines in reference to left knee arthroscopy and/or other procedures as may be found necessary (diagnostic arthroscopy), the following recommendation is made:

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).

Dr. M explained how the surgery done by Dr. K, Claimant's first surgeon, likely was not performed in such a way as to find the problems he believes Claimant continues to suffer. The posterolateral bundle tears of the ACL are only found when a doctor flexes the patient's knee from 90 to 100 degrees during surgery and most doctors do not do that. The operative report is silent on this matter, although it does state Dr. K examined the ACL by blunt instrument. Dr. M also testified that medical literature, including studies he has performed, written and published himself in peer reviewed literature, indicate MRIs miss 90% of these posterolateral tears he expects to find in Claimant's knee and the only way to find these tears is by going onto the knee. Dr. D acknowledges Claimant's knee has not healed correctly but an arthroscopy is not the proper procedure at this time. He opines Claimant should undergo another MRI.

As noted above, Dr. M testified and provided the names of doctors, articles and journals supporting his testimony that an MRI is inconclusive for the diagnosis he suspects and the only way to find these tears is by looking inside the knee. Dr. M also explained Claimant has a positive Marcus Stewart test which is dispositive for the suspected diagnosis, whereas a pivot shift test is only positive in 30% of these cases. Because Claimant has had conservative care, subjective clinical findings and an MRI, Claimant met his burden of proof based upon a preponderance of the medical evidence and evidence based medicine.

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 (City), Claimant was the employee of (Employer), Employer.
 - C. On (City), Claimant sustained a compensable injury.

D. On (City), Employer provided workers' compensation insurance with Liberty Mutual Fire Insurance Company.

E. The Independent Review Organization orthopedic surgeon determined Claimant should not have left knee arthroscopy and/or other procedures as may be found necessary.

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. Left knee arthroscopy and/or other procedures as may be found necessary are health care reasonably required for the compensable injury of (City).

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 contrary to the decision of the IRO orthopedic surgeon that left knee arthroscopy and/or other procedures as may be found necessary are not health care reasonably required for the compensable injury of (City).

DECISION

Claimant is entitled to left knee arthroscopy and/or other procedures as may be found necessary for the compensable injury of (City).

ORDER

Carrier is 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 SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed this 11th day of July, 2012.

KEN WROBEL
Hearing Officer