

MEDICAL CONTESTED CASE HEARING NO. 13009

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 October 15, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the determination of the Independent Review Organization that Claimant is not entitled to right hallux metatarsal phalangeal joint arthrodesis for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by MM, ombudsman. Carrier appeared and was represented by PS, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2.

Claimant's Exhibits C-1 through C-8.

Carrier's Exhibits CR-A through CR-E.

BACKGROUND INFORMATION

Claimant is a 63-year-old maintenance worker for Employer who was injured on (Date of Injury) when lumber fell on his right foot causing a nondisplaced fracture of the right hallux metatarsal shaft and soft tissue contusion of the right foot. Claimant was treated with nonweightbearing status, using a right short leg splint with ankle in neutral dorsiflexion. Claimant followed up with CG, M.D., an orthopedic surgeon, who has recommended surgery consisting of right hallux

metatarsophalangeal joint arthrodesis. The request was reviewed on June 20, 2012, by H. J P, M.D., a board certified orthopedic surgeon, who recommended that surgery be denied based upon the Official Disability Guides, Ankle and Foot Chapter. Reconsideration was requested and on June 25, 2012, RS, D.O., a board certified orthopedic specialist, reviewed the request and recommended denial based upon the Official Disability Guides Ankle and Foot Chapter, indicating that Claimant has not had the conservative treatment recommended in evidence-based medical guidelines. Claimant has appealed the denial of treatment and on July 20, 2012, the case was reviewed by a board certified orthopedic surgeon who upheld the denial of the requested procedure. The reviewer pointed out that the Official Disability Guidelines do not specifically address arthrodesis for hallux rigidus and first metatarsal shaft fracture, and agreed with the Carrier utilization reviewers that Claimant has not had an adequate amount of nonoperative treatment including anti-inflammatory medication, injections and/or orthotic or shoe modification. Claimant has perfected this appeal of the IRO decision.

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. 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."

With regard to arthrodesis for foot and ankle problems, the ODG states:

Recommended as indicated below. In painful hindfoot osteoarthritis the arthroscopic technique provides reliable fusion and high patient satisfaction with the advantages of a minimally invasive procedure. In stage III and IV adult acquired flatfoot due to posterior tibial tendon dysfunction, correcting and stabilizing arthrodeses are advised. Also see Surgery for calcaneal fractures; Surgery for posterior tibial tendon ruptures.

ODG Indications for Surgery™ -- Ankle Fusion:

Criteria for fusion (ankle, tarsal, metatarsal) to treat non- or malunion of a fracture, or traumatic arthritis secondary to on-the-job injury to the affected joint:

1. Conservative Care: Immobilization, which may include: Casting, bracing, shoe modification, or other orthotics. OR Anti-inflammatory medications. PLUS:
2. Subjective Clinical Findings: Pain including that which is aggravated by activity and weight-bearing. AND Relieved by Xylocaine injection. PLUS:
3. Objective Clinical Findings: Malalignment. AND Decreased range of motion. PLUS:
4. Imaging Clinical Findings: Positive x-ray confirming presence of: Loss of articular cartilage (arthritis). OR Bone deformity (hypertrophic spurring, sclerosis). OR Non- or malunion of a fracture. Supportive imaging could include: Bone scan (for arthritis only) to confirm localization. OR Magnetic Resonance Imaging (MRI). OR Tomography.

Procedures Not supported: Intertarsal or subtalar fusion, except for stage 3 or 4 adult acquired flatfoot.

As indicated by the IRO reviewer, the ODG does not specifically address arthrodesis for the conditions at issue in Claimant's case. However, the ankle guidelines cited from the ODG were used by all reviewers as an indication of conservative measures that should be tried before consideration of arthrodesis. In this regard, Claimant testified that he does not take medications for any medical condition as a matter of personal choice, and that he has not been prescribed medications for his metatarsophalangeal joint arthritis. Neither had Claimant had injections to address the arthritis. He testified that he had tried a steel shank orthotic which did not help and

made his pain worse. He has not had shoe modification. The preponderance of the evidence supports the determination of the IRO reviewer that Claimant has not had adequate conservative treatment as a prerequisite to the requested joint fusion surgery.

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 Trinity Structural Components.
 - C. On (Date of Injury), Employer provided workers' compensation insurance through Ace American Insurance Company.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. Claimant is not covered by a Workers' Compensation Healthcare Network.
 - F. The Independent Review Organization determined that Claimant is not entitled to the requested medical treatment.
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. Right hallux metatarsal phalangeal joint arthrodesis 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 right hallux metatarsal phalangeal joint arthrodesis is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to right hallux metatarsal phalangeal joint arthrodesis for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. 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:

**C T CORPORATION SYSTEM
350 NORTH ST PAUL STREET
DALLAS, TEXAS 75201**

Signed this 19th day of October, 2012.

Warren E. Hancock, Jr.
Hearing Officer