

MEDICAL CONTESTED CASE HEARING NO. 13020  
M6-12-42178-01

**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 November 1, 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 arthroscopic surgery to the left knee with anterior cruciate ligament repair, synovectomy, and lysis of adhesions for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was represented by DR, attorney.  
Respondent/Carrier appeared and was represented by CM, attorney.

**BACKGROUND INFORMATION**

In August of 2012, an Independent Review Organization reviewer upheld the two previous denials for Claimant to have left knee arthroscopic surgery with anterior cruciate ligament repair, synovectomy and lysis of adhesions. According to documentary evidence the reviewer is a medical doctor with board certification in orthopedic surgery. All three reviewers agreed that a magnetic resonance imaging of Claimant's left knee did not demonstrate pathology required for surgery. Although the reviewers referenced the *Official Disability Guidelines* (ODG), they did not mention that arthroscopy and arthrogram are also listed along with a magnetic resonance imaging as acceptable methods to demonstrate pathology for which repair is needed.

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 anterior cruciate ligament reconstruction:

- (1) Conservative Care (not required for acute injury
- (2) with hemarthrosis) Physical Therapy OR brace, PLUS
- (3) Subjective clinical findings: pain alone is not an
- (4) indication for surgery. Instability of the knee,
- (5) described as "buckling or give way". Or significant
- (6) effusion at the time of injury. OR Description of
- (7) injury indicates rotary twisting or hyperextension
- (8) incident. PLUS
- (9) Objective clinical findings (in order of preference)
- (10) Positive Lachman's sign OR Positive pivot shift.
- (11) OR (optional) Positive KT 1000 (>3-5mm = +1,
- (12) >5-7MM = +3). PLUS
- (13) Imaging Clinical Findings: (Not required if acute
- (14) effusion, hemarthrosis, And instability; or
- (15) documented history of effusion, hemarthrosis, and
- (16) instability.) Required for ACL disruption on:
- (17) Magnetic resonance imaging (MRI).
- (18) OR Arthroscopy OR Arthrogram

- (19) (Washington, 2003) (Woo, 2002) (Shelbourne, 2000)
- (20) (Millett, 2004)

Dr. M, the orthopedic surgeon requesting authorization to perform surgery on Claimant's knee, was aware that the magnetic resonance imaging of Claimant's knee did not show a tear. Both before and after any reviewer looked at Dr. M's request, Dr. M explained that medical literature shows that a partial anterior cruciate ligament injury is missed by magnetic resonance imaging 90% of the time. By August of 2012, Dr. M referred to a study by H. Umans and others that was published in Vol. 165, pages 893-897 of **American Journal of Roentgenology**. That study concluded that arthroscopy could establish findings that the imagings could not capture.

Dr. M determined that Claimant's injury involves instability of the posterolateral bundle. In 2003, prior to examining Claimant, he wrote and presented a paper on *Advances in Knee and Shoulder Arthroscopic Surgery* describing adults who have partial anterior cruciate ligament injuries which involve instability of the posterolateral bundle. He wrote that the posterolateral bundle provides rotation stability for the knee unless the knee is damaged. In Claimant's case, Dr. M noted instability from damage to knee.

Claimant's evidence shows that the procedure requested is reasonable and necessary for the compensable injury.

Even if all the evidence 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, who was the employee of the (Employer), sustained a compensable injury.
  - C. On (Date of Injury), Employer provided workers' compensation insurance with Starnet 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. Arthroscopic surgery to the left knee with anterior cruciate ligament repair, synovectomy, and lysis of adhesions is 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 contrary to the decision of the Independent Review Organization that arthroscopic surgery to the left knee with anterior cruciate ligament repair, synovectomy, and lysis of adhesions is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is entitled to arthroscopic surgery to the left knee with anterior cruciate ligament repair, synovectomy, and lysis of adhesions for the compensable injury of (Date of Injury).

### **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 **STARNET INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**KIRK HOOD  
811 DALLAS AVENUE  
HOUSTON, TX 77002**

Signed this 5th day of November, 2012.

CAROLYN F. MOORE  
Hearing Officer