

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 December 4, 2012 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to an outpatient left knee scope with meniscal debridement for the compensable injury of (Date of Injury)?

PARTIES PRESENT

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

Respondent/Carrier appeared and was represented by BJ, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: Dr. S

The following exhibits were admitted into evidence:

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

Claimant's Exhibits: C-1 through C-9

Carrier's Exhibits: R-1 through R-9

BACKGROUND INFORMATION

Claimant sustained a compensable left knee injury on (Date of Injury). An MRI of the left knee was performed on March 28, 2012 and revealed findings of moderate medial compartment chondromalacia with locked bucket handle tear of the medial meniscus and horizontal cleavage

tearing of the anterior half of the medial meniscal remnant. Claimant underwent a partial left knee medial meniscectomy on April 25, 2012 and he completed 17 sessions of post-operative physical therapy. Claimant continued to suffer from left knee pain and swelling and he underwent a repeat MRI on June 4, 2012 which revealed post-operative changes but no meniscal tear. Claimant's treating doctor has recommended an outpatient left knee scope with meniscal debridement to determine the nature of Claimant's left knee symptoms. This request was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, identified as a board certified orthopedic surgeon, determined that the request for an outpatient left knee scope with meniscal debridement was not medically necessary. The IRO reviewer noted that there were no post-operative imaging studies provided demonstrating any meniscal tear which is required pursuant to the recommendations in the Official Disability Guidelines (ODG). The IRO reviewer also noted that the records do not reflect lower levels of care have been undertaken, including the use of non-steroidal anti-inflammatories and that Claimant does not have positive McMurray's sign on physical examination.

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."

The ODG provides the following for meniscal debridement:

ODG Indications for Surgery™ -- Meniscectomy:

Criteria for meniscectomy or meniscus repair (Suggest 2 symptoms and 2 signs to avoid scopes with lower yield, e.g. pain without other symptoms, posterior joint line tenderness that could just signify arthritis, MRI with degenerative tear that is often false positive):

- 1. Conservative Care:** (Not required for locked/blocked knee.) Physical therapy. OR Medication. OR Activity modification. PLUS
- 2. Subjective Clinical Findings (at least two):** Joint pain. OR Swelling. OR Feeling of give way. OR Locking, clicking, or popping. PLUS
- 3. Objective Clinical Findings (at least two):** Positive McMurray's sign. OR Joint line tenderness. OR Effusion. OR Limited range of motion. OR Locking, clicking, or popping. OR Crepitus. PLUS
- 4. Imaging Clinical Findings:** (Not required for locked/blocked knee.) Meniscal tear on MRI.

(Washington, 2003)

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

The IRO reviewer determined that Claimant did not meet the requirements of the ODG for the proposed surgery. Dr. S testified that Claimant's medical records confirm complaints of joint pain but fail to identify limited range of motion, positive McMurray's sign or evidence of a meniscal tear on the repeat MRI. Dr. S testified that Claimant does not meet the ODG criteria nor would the surgery be beneficial for Claimant's left knee condition. Claimant's treating doctor discussed the proposed surgery with Claimant on July 19, 2012 and indicated to Claimant that there was a possibility that he does not have tearing of the meniscus but that his symptoms could all be from the quadriceps strain. Claimant offered no medical opinions regarding the necessity of the proposed surgery. Based on the evidence presented, Claimant does not meet the ODG criteria for an outpatient left knee scope with meniscal debridement and he failed to provide sufficient evidence based medical evidence to overcome 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) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant, who was the employee of (Employer), Employer, sustained a compensable left knee strain.
 - C. On (Date of Injury), Employer provided workers' compensation coverage with Texas Mutual Insurance Company, Carrier.
 - D. The IRO determined that the requested outpatient left knee scope with meniscal debridement was not reasonable and necessary health care for the compensable injury of (Date of Injury).
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. Claimant does not meet the requirements of the ODG for an outpatient left knee scope with meniscal debridement and he failed to present other evidence-based medicine supporting the necessity for this procedure.
4. An outpatient left knee scope with meniscal debridement 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 an outpatient left knee scope with meniscal debridement is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an outpatient left knee scope with meniscal debridement 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**RON O. WRIGHT
6210 EAST HIGHWAY 290
AUSTIN, TX 78723**

Signed this 4th day of December, 2012.

CAROL A. FOUGERAT
Hearing Officer