

MEDICAL CONTESTED CASE HEARING NO. 13079

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 contested case hearing was held on April 1, 2013 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to 18 sessions of physical therapy to the right knee for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by FA, ombudsman. Respondent/Carrier appeared and was represented by KP, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his right lower extremity in a motor vehicle accident on (Date of Injury), including a full thickness laceration of the quadriceps that was surgically repaired. Following the surgery he had 24 sessions of physical therapy and 10 sessions of work hardening. He continued to have pain, and a partial tear of the medical meniscus was identified. He had surgery to address the meniscal tear on August 3, 2012 followed by 17 sessions of physical therapy. Rehab Management requested pre-authorization for an additional 18 sessions of physical therapy to the right knee. The IRO decision upheld the previous denials, and Claimant appealed.

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 guidelines concerning physical medicine in connection with a meniscal tear:

ODG Physical Medicine Guidelines –

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

Dislocation of knee; Tear of medial/lateral cartilage/meniscus of knee;
Dislocation of patella (ICD9 836; 836.0; 836.1; 836.2; 836.3; 836.5):

Medical treatment: 9 visits over 8 weeks

Post-surgical (Meniscectomy): 12 visits over 12 weeks

The IRO doctor, an MD board certified in physical medicine and rehabilitation, thought the requested treatment was not medically necessary, noting Claimant had already exceeded the ODG treatment guidelines recommendation of 12 post-operative visits over 12 weeks for surgery for derangement of a meniscus. The IRO doctor also observed that the records indicated Claimant had not been consistently following his prescribed home exercise program, and that he should be able to make progress if he continues with the prescribed home exercises.

Claimant testified there was a complicating factor in that the meniscal tear retarded his recovery from the quadriceps injury and surgery, and he needed the additional physical therapy sessions to strengthen the quadriceps. There was a letter to that effect from treating physician Dr. K. However, neither Claimant nor Dr. K cited the ODG treatment guidelines or any other evidence based medical evidence to support their position.

There was no objection to the testimony, reports, or qualifications of any doctor.

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 (Employer), Employer.
 - C. On (Date of Injury) Employer provided workers' compensation insurance with American Zurich Insurance Company, Carrier.
 - D. On (Date of Injury) Claimant sustained a compensable injury.
 - E. The Independent Review Organization determined Claimant should not have the requested 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. 18 sessions of physical therapy to the right knee 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 18 sessions of physical therapy to the right knee is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to 18 sessions of physical therapy to the right knee 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **AMERICAN ZURICH 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, TEXAS 78701**

Signed this 1st day of April, 2013.

Thomas Hight
Hearing Officer