

MEDICAL CONTESTED CASE HEARING NO. 13086

**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 15, 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 left knee arthroscopy 2/lateral release [29873] by December 7, 2012, for the compensable injury of (Date of Injury)?

Issue #1 above was amended because actually litigated as follows:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a left knee arthroscopy 2/lateral release [29873], for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

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

Respondent/Carrier appeared and was represented by CE, 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 through HO-2.

Claimant's Exhibits C-1 through C-3 and C-4 [pages 1-20 and pages 27-33] and C-5 through C-6.

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

### **BACKGROUND INFORMATION**

Claimant is a 21 year old female who injured her knee while in the course and scope of her employment on (Date of Injury). Claimant contends a left knee arthroscopy 2/lateral release is medically necessary because physical therapy did not help and the treating doctor, Dr. F's recommended home physical therapy was unsuccessful in reducing the pain as well. Claimant also stated that Dr. F indicated that an MRI was unnecessary because he could see the damage to her left knee and he opined that surgery was medically necessary.

Dr. F requested a left knee arthroscopy 2/lateral release. Such requested treatment underwent utilization review on September 12, 2012 and was denied. Dr. F sought reconsideration and such denial was upheld on October 10, 2012. Petitioner then appealed the denial to an Independent Review Organization (hereinafter "IRO") and the IRO reviewer, who was board certified in orthopedic surgery, upheld the previous adverse determinations based on the following sources: medical judgment, clinical experience, expertise in accordance with accepted medical standards, and *ODG - Official Disability Guidelines & Treatment Guidelines* (hereinafter "ODG"). Consequently, Petitioner appealed 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 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 is 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 pertinent provisions of the ODG applicable to this case are as follows, to wit:

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)

In the instant case, the IRO reviewer, who is board certified in orthopedic surgery, noted the medical records provided lacked specificity as to the non-operative treatment provided the injured employee. The IRO further reported there was no documentation of specific physical therapy regimen, the number of visits to physical therapy, or the exercise protocols utilized. There was no documentation of patellar stabilizing brace application and changes in quadriceps strength were not documented. Lastly, the reviewer noted in the absence of documentation of vigorous quadriceps rehabilitation, adverse determination is respectfully recommended.

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. Accordingly, Petitioner as the party appealing the IRO decision had the burden to either show through the opinion of a qualified expert that she meets the ODG or, if she doesn't, that her situation falls outside the

ODG in some respect [e.g. the ODG doesn't address her specific situation]. In other words, Claimant/Petitioner needed to overcome the IRO with evidence-based medicals outside of what is contained in the ODG evidence to establish that the requested treatment was medically necessary. However, there was insufficient evidence-based medical evidence explaining how the ODG criteria for the requested treatment was met and to establish that the requested treatment was medically necessary. Therefore, the Claimant/Petitioner has failed to meet her burden that the decision of the IRO should be reversed that Claimant is not entitled to a left knee arthroscopy 2/lateral release [29873], for the compensable injury of (Date of Injury).

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 with Service Lloyds Insurance Company as Carrier.
  - D. On (Date of Injury), Claimant sustained a compensable 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. The IRO determined that a left knee arthroscopy 2/lateral release [29873] is not health care reasonably required for the compensable injury of (Date of Injury).
4. Left knee arthroscopy 2/lateral release [29873], 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 a left knee arthroscopy 2/lateral release [29873], is not health care reasonably required for the for the compensable injury of (Date of Injury).

### **DECISION**

Claimant/Petitioner is not entitled to a left knee arthroscopy 2/lateral release [29873], for the compensable injury of (Date of Injury).

### **ORDER**

Carrier/Respondent 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 **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HWY NORTH  
AUSTIN, TX 78755**

Signed this 24th day of April, 2013.

Jacqueline Harrison  
Hearing Officer