

MEDICAL CONTESTED CASE HEARING NO. 13102

**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 June 06, 2013, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to an MRI of the right knee for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by EJ, ombudsman.  
Respondent/Carrier appeared and was represented by RJ, attorney.

**BACKGROUND INFORMATION**

Claimant sustained compensable injuries to his back and right knee in the course and scope of his employment on (Date of Injury). He had surgery to his right knee on March 03, 2008. Claimant continues to have pain in his right knee and occasionally falls due to the knee giving out. He now ambulates with a cane or walker. His Treating Doctor, M, M.D., is requesting a repeat MRI of the right knee to determine the next course of treatment. Carrier disputed the request and the IRO doctor upheld the denial.

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.

On the date of this medical contested case hearing, the Official Disability Guidelines provided only the following with regard to a repeat MRI of the knee:

Repeat MRIs: Post-surgical if need to assess knee cartilage repair tissue

The IRO doctor added many criteria in his denial of the treatment that are not found in the Official Disability Guidelines. Dr. M testified to Claimant's continuing problems and that the only way to determine the next course of treatment would be an MRI. He testified that after a surgery the natural course of the knee would be degeneration and an MRI would be necessary to determine if Claimant would need a total knee replacement. He testified it is unequivocal that there is no other diagnostic testing that would provide the information needed so that the next course of treatment could be determined. He testified he could not tell what damage there is in the knee without the MRI.

Claimant met his burden of proof that the repeat MRI is treatment reasonably required for his compensable injury of (Date of Injury). The preponderance of the medical evidence is contrary to the IRO decision. Claimant met the Official Disability Guidelines for a repeat MRI of the right knee.

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), Claimant sustained a compensable injury.
  - D. The Independent Review Organization board certified family medicine doctor determined Claimant should not have an MRI of the right knee.
  - E. On (Date of Injury), Employer provided workers' compensation insurance through Liberty Insurance Corporation, Carrier.
  - F. The Texas Department of Insurance appointed U.S. Resolutions Inc. as the IRO.
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. An MRI of the right knee 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 IRO that an MRI of the right knee is not health care reasonably required for the compensable injury of (Date of Injury).

## **DECISION**

Claimant is entitled to an MRI of the right knee 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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TX 78701-3218.**

Signed this 07th day of June, 2013.

**KEN WROBEL**  
Hearing Officer