

MEDICAL CONTESTED CASE HEARING NO. 13113

**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 July 24, 2013 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 entitled to 10 sessions of gait training for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Respondent/Claimant appeared and was represented by AV, attorney. Petitioner/Carrier appeared and was represented by DP, attorney. In attendance on behalf of the employer was PJ.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: Claimant

For Carrier: Dr. K

The following exhibits were admitted into evidence:

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

Claimant's Exhibits: None

Carrier's Exhibits: CR-A through CR-D

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on (Date of Injury) as a result of a slip and fall. Claimant has undergone surgery to the left shoulder and, on March 26, 2012, she underwent a total left knee replacement as a result of this injury. Claimant completed a course of post-operative physical therapy and, in January 2013, Claimant's treating doctor, Dr. M, recommended 10 sessions of gait training due to Claimant's severe antalgic gait and loss of range of motion. The request for 10 sessions of gait training was denied by the Carrier and submitted to an IRO who overturned the denial. The IRO reviewer, identified as board certified

in orthopedic surgery, determined that, based on the records submitted for review, the requested services meet the Official Disability Guidelines (ODG) criteria.

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(s), "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."

**ODG Recommendations for Gait Training:**

Recommended. Gait training is teaching patients with severe neurological or musculoskeletal disorders to ambulate, or to ambulate with an assistive device, and is necessary for training individuals whose walking abilities have been impaired by neurological, muscular or skeletal abnormalities or trauma. Gait training is not appropriate when the individual's walking ability is not expected to improve, or for relatively normal individuals with minor or transient abnormalities of gait who do not require an assistive device, when these transient

gait abnormalities may be remedied by simple instructions to the individual. Gait training may include treadmill training and body-weight support systems, as well as other modalities. (Brosseau, 2006) In this cohort study, gait training was positively associated with outcomes for all three groups, patients with total knee arthroplasty (TKA), patients with stroke, and patients with traumatic brain injury (TBI). (Dejong, 2011) Gait training, muscle strengthening, and other exercise training are considered active procedures, and are recommended. The CPT procedure code for gait training is 97116, and it is done 44% of the time for a broken leg, ICD9 821.01. (ODG-CPT, 2001) See Physical therapy for specific guidance. Walking with a toe-out gait consistently reduces the second peak of the knee adduction moment, but does not affect the first peak with the same consistency across studies. Knee osteoarthritis (OA) is closely associated with the development of a high external knee adduction moment, which reflects compression of the medial compartment of the knee, and the nature of biomechanical loading at the knee joint can be altered by a number of conservative intervention strategies, which are potentially capable of slowing the progression of the disease. Walking with a toe-out gait, with the foot externally rotated with respect to the direction of progression, reduces the knee adduction moment in patients with medial knee OA. With respect to the long-term influence of toe-out gait, an increased baseline toe-out angle is associated with a reduced likelihood of disease progression in patients with medial knee OA. Although data relating to the long-term effects of toe-out gait are scarce, its immediate effect is to consistently reduce the second peak of the knee adduction moment, with less consistent effects upon the first peak of this parameter. Despite this strategy being relatively simple and not requiring any equipment, it does require permanent adoption of an altered gait by the patient. Nevertheless, if patients can adhere to this strategy, it offers potential for reducing the progression of knee OA. (Reeves, 2011)

Claimant testified that she was walking incorrectly after the knee replacement surgery and that the gait therapy was requested to improve her ability to ambulate. Claimant testified that she completed the 10 sessions of gait therapy and that the therapy improved her ability to walk. Dr. K testified that he did not believe Claimant met the requirements of the ODG for additional therapy because, based on Claimant's left knee range of motion documented in Dr. M's records, the therapy would not provide any benefit for Claimant and that she would not have been expected to improve with the therapy. Although the IRO reviewer noted that there were no recent records to consider at the time of the review, the IRO reviewer did consider Dr. M's records and determined that Claimant did meet the ODG criteria for 10 sessions of gait therapy. Based on the evidence presented, Carrier failed to offer an evidence-based medical opinion sufficient to contradict the determination of the IRO. The preponderance of the evidence

presented is not contrary to the decision of the IRO that 10 sessions of gait training is medically necessary for treatment of the compensable injury of (Date of Injury).

Even though all the evidence presented may not have been discussed in detail, 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 (Self-Insured), Employer.
  - C. On (Date of Injury), Employer had workers' compensation insurance coverage as a self-insurer.
  - D. Claimant sustained a compensable injury on (Date of Injury).
  - E. The IRO reviewer determined that 10 sessions of gait training was medically necessary.
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 meet the requirements of the ODG for 10 sessions of gait training and the Carrier failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
4. Ten sessions of gait training 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 was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that 10 sessions of gait training is health care reasonably required for the compensable injury of (Date of Injury)

**DECISION**

Claimant is entitled to 10 sessions of gait training for the compensable injury of (Date of Injury).

**ORDER**

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**(SELF-INSURED)**  
**(STREET ADDRESS)**  
**(CITY), TX (ZIP CODE)**

Signed this 24<sup>th</sup> day of July, 2013.

Carol A. Fougerat  
Hearing Officer