

MEDICAL CONTESTED CASE HEARING NO. 14037

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant failed to prove that the preponderance of evidence is contrary to the IRO opinion that a right knee medial hemiarthroplasty with three day inpatient stay is not health care reasonably required for the compensable injury of (Date of injury).

STATEMENT OF THE CASE

A prehearing for this medical contested case hearing was held on October 1, 2013. No agreement was reached and on December 2, 2013, PB, a Division hearing officer, held a medical contested case hearing 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 a right knee medial hemiarthroplasty with three day inpatient stay is not health care reasonably required for the compensable injury of (Date of injury)?

PARTIES PRESENT

Claimant appeared and was assisted by CR, ombudsman. Carrier appeared and was represented by PP, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For the Petitioner/Claimant: Claimant and CM, M.D.

For the Respondent/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-10

Carrier's Exhibits CR-A through CR-J

DISCUSSION

Claimant sustained a compensable injury, which includes his right knee, on (Date of injury). Claimant's surgeon, CM, M.D., requested authorization to perform a right knee medial hemiarthroplasty with three day inpatient stay. The IRO reviewed the case and determined that such procedures were not warranted or indicated under the Official Disability Guidelines (ODG).

The IRO reviewer determined that Claimant met all the ODG criteria for the knee arthroplasty except a BMI of less than 35. According to the medical evidence presented, Claimant was over 50 years of age, 5'8" tall, and weighed 270 pounds, which amounted to a BMI of 41.05.

Dr. M testified that the requested procedure was medically indicated, notwithstanding the lack of documentation of Claimant's current BMI or proof of the required limited range of motion. Dr. M further testified that, in his experience, the ODG requirement that the patient have less than a 90 degree bend during ROM testing, is contrary to accepted medical practice and peer-reviewed medical articles. On cross-examination, however, he was not able to recall the title of any peer-reviewed medical articles. He also conceded on cross-examination that he had not been provided documentation for the patient's physical therapy and the results of prior surgical procedures by other doctors, though he had spoken to the physical therapist and was told that the physical therapy did not relieve Claimant's complaints of pain. Dr. M also stated that it was acceptable practice in the field of orthopedic surgery to perform the procedure in question despite a patient, like Claimant, not meeting all the ODG. Following the hearing, the record was kept open until December 30, 2013, in order to afford Claimant and Dr. M an opportunity to offer into evidence the medical articles that the doctor could not remember off the top of his head while testifying. No such articles were offered into evidence before the filing deadline; therefore, the record was closed on December 31, 2013.

After consideration of the evidence, I find that Claimant did not meet his burden of proof to overcome the IRO opinion because he failed to present the requisite evidence-based medical opinion to explain how his situation justifies a departure from the criteria set out in the ODG.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all the evidence whether or not the evidence is specifically discussed in this Decision and Order.

FINDINGS OF FACT

1. At the pre-hearing held on October 1, 2013, 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 through (SELF-INSURED), Carrier.
 - D. Claimant sustained a compensable injury on (Date of injury).
 - E. The Texas Department of Insurance appointed True Resolutions, Inc. as IRO to review Carrier's denial of Claimant's request for a right knee medial hemiarthroplasty with three day inpatient stay.
 - F. The IRO determined that Claimant should not have a right knee medial hemiarthroplasty with three day inpatient stay.
 - G. The IRO upheld Carrier's denial of a right knee medial hemiarthroplasty with three day inpatient stay.
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 failed to prove that the preponderance of evidence is contrary to the IRO opinion that a right knee medial hemiarthroplasty with three day inpatient stay 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 right knee medial hemiarthroplasty with three day inpatient stay is not health care reasonably required for the compensable injury of (Date of injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that a right knee medial hemiarthroplasty with three day inpatient stay is not health care reasonably required 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 **(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 31st day of December, 2013.

Phillip Brown
Hearing Officer