

**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: (1) the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to arthroscopy with treatment of intraarticular pathology for the right knee.

**ISSUES**

A contested case hearing was held on January 30, 2014, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to an arthroscopy with treatment of intraarticular pathology for the right knee?

**PARTIES PRESENT**

Petitioner/Claimant appeared failed to appear and did not respond to the Division's 10-day letter. Respondent/Carrier appeared and was represented by JF, attorney.

**BACKGROUND INFORMATION**

Although properly notified, the Claimant failed to appear for the medical contested case hearing scheduled for 10:30 a.m. on January 30, 2014. A letter advising that the hearing had convened and that the record would be held open for ten days to afford Claimant the opportunity to respond and request that the hearing be rescheduled to permit him to present evidence on the disputed issues was mailed to Claimant on January 30, 2014. Claimant failed to respond to the Division's 10-day letter.

Evidence presented in the hearing revealed that Claimant sustained a compensable injury on (Date of Injury). An MRI of the right knee dated April 9, 2013 revealed full thickness chondral fissuring of the central femoral trochlea. The clinical notes dated April 23, 2013 details the Claimant continuing with right knee pain and also noted was locking of the knee as well as range of motion restrictions.

The utilization review dated May 15, 2013, resulted in a denial for a right knee arthroscopy secondary to no information provided regarding the Claimant's conservative therapy or injection history.

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."

The pertinent provisions of the ODG applicable to this case are as follows, to wit:

### **Arthroscopy**

Definition: An arthroscopy is a tool like a camera that allows the physician to see the inside of a joint, and the surgeon is sometimes able to perform surgery through an arthroscope, which makes recovery faster and easier. For the Knee, See Arthroscopic surgery for osteoarthritis;

Meniscectomy; & Diagnostic arthroscopy.

ODG Indications for Surgery -- Autologous chondrocyte implantation (ACI):

### **Criteria for autologous chondrocyte implantation (ACI):**

1. Conservative Care: Failure of conservative therapy (minimum of 2 months of physical therapy). PLUS
2. Subjective Clinical Findings: Injured worker (IW) is capable and willing to follow the rehabilitation protocol and post-operative weight bearing restrictions. AND Presence of disabling pain and/or knee locking. PLUS
3. Objective Clinical Findings: Failure of established surgical interventions (i.e., microfraction, drilling, abrasion) (diagnostic arthroscopy, lavage, or debridement is not considered adequate to meet this criterion) **AND Focal articular cartilage defect down to but not through the subchondral bone on a load bearing surface of the femoral condyle (medial, lateral, trochlear) (not in the patella).** AND Single, clinically significant, lesion that measures between 1 to 10 sq cm in area that affects a weight-bearing surface of the medial femoral condyle or the lateral femoral condyle. **AND Size of defect measures less than 7 mm in depth, less than 6.0 cm in length, and area ranging from 1.6-10 square cm.** AND No active inflammatory or other arthritis, clinically and by X-ray. AND Procedure is not being done for treatment of degenerative arthritis (osteoarthritis). AND Stable knee with intact meniscus and normal joint space on X-ray. AND Full-thickness lesion [\*Modified Outerbridge Grade III-IV] that involves only cartilage. **AND Knee is stable with intact, fully functional menisci and ligaments. AND Normal knee alignment. AND Normal joint space. AND Patient is less than 60 years old. AND Body Mass Index of less than 35. [\* Modified Outerbridge Classification: I. Articular cartilage softening , II. Chondral fissures or fibrillation <1.25 cm in diameter, III. Chondral fibrillation >1.25 cm in diameter ("crabmeat changes"), IV. Exposed subchondral bone.] PLUS**
4. Imaging Clinical Findings: Chondral defect on the weight-bearing surface of the medial or lateral femoral condyle on: MRI. **OR** Arthroscopy.

**ACI Exclusion Criteria:** ACI is definitely not recommended in the following circumstances: Lesion that involves any portion of the patellofemoral articular cartilage, bone, or is due to osteochondritis dissecans; A "kissing lesion" or Modified Outerbridge Grade II, III, or IV exists on the opposite tibial surface; Mild to severe localized or diffuse arthritic condition that appears on standing x-ray as joint space narrowing, osteophytes, or changes in the underlying bone; Unhealthy cartilage border; the synovial membrane in the joint may be used as a substitute border for up to 1/4 of the total circumference; Prior total meniscectomy of either compartment in the affected knee (Must have at least 1/3 of the posterior meniscal rim.); History of anaphylaxis to gentamycin or sensitivity to materials of bovine origin; Chondrocalcinosis is diagnosed during the cell culture process.

The URA reviewer, a Texas state-licensed specialist in Orthopedic Surgery reviewed the case and upheld the denial of the arthroscopy with treatment of intraarticular pathology for the right knee. The basis of the denial was lack of information submitted regarding the Claimant's

previous involvement with conservative therapies. Additionally it was unclear if the Claimant underwent any injections at the right knee.

Medical documentation and testimony were insufficient to establish that the medical treatment requested was medically necessary. Therefore, the Petitioner has failed to meet his burden that the decision of the IRO should be reversed that Claimant is not entitled to arthroscopy with treatment of intracicular pathology for 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. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
2. On (Date of Injury), Claimant was the employee of (Employer), Employer.
3. Claimant sustained a compensable injury on (Date of Injury).
4. The Division sent a single document stating the true corporate name of the Carrier and the name and street address of Carrier's registered agent for service with the 10-day letter to the Claimant at the Claimant's address of record and the Petitioner/Claimant at Petitioner/Claimant's address of record. That document was admitted into evidence as Hearing Officer Exhibit Number 2.
5. Claimant failed to appear for the January 30, 2014, medical contested case hearing.
6. The Claimant did not have good cause for failing to appear at the medical contested case hearing scheduled for January 30, 2014.
7. The IRO determined that an arthroscopy with treatment of intracicular pathology for the right knee was not health care reasonably required for treatment of the compensable injury of (Date of Injury).
8. An arthroscopy with treatment of intracicular pathology for 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 an arthroscopy with treatment of intraarticular pathology for the right knee is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to an arthroscopy with treatment of intraarticular pathology for 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 §408.021.

The true corporate name of the insurance carrier is **SAFETY NATIONAL CASUALTY CORPORATION** and the name and address of its registered agent for service of process is:

**C T CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TX 75201-3136**

Signed this 21st day of February, 2014.

Jacqueline Harrison  
Hearing Officer