

MEDICAL CONTESTED CASE HEARING 14051

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 is entitled to an MCL/ACL knee brace for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On February 26, 2014, Teresa G. Hartley, a Division Hearing Officer, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a MCL/ACL knee brace for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by CR, ombudsman. Respondent/Carrier appeared and was represented by MGM, attorney.

DISCUSSION

On (Date of Injury), Claimant was assisting a disabled vehicle that was on the freeway. A tire from the opposite side of the high-way, flew across the lanes of traffic, and struck the Claimant on his right knee. As a result of the compensable injury, the carrier has accepted a right knee contusion, right leg abrasion, right knee medial high grade strain, and a right knee strain. The Claimant's treating physician has requested an MCL/ACL knee brace. An IRO doctor, a board certified surgeon, upheld the previous denials, and Petitioner appealed.

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 ODG provides the following criteria for the general use of knee braces:

Prefabricated knee braces may be appropriate in patients with one of the following conditions:

- (1) Knee instability
- (2) Ligament insufficiency/deficiency
- (3) Reconstructed ligament
- (4) Articular defect repair
- (5) Avascular necrosis
- (6) Meniscal cartilage repair
- (7) Painful failed total knee arthroplasty
- (8) Painful high tibial osteotomy
- (9) Painful unicompartmental osteoarthritis
- (10) Tibial plateau fracture

Custom-fabricated knee braces may be appropriate for patients with the following conditions which may preclude the use of a prefabricated model:

- (1) Abnormal limb contour, such as:
 - (a) Valgus [knock-kneed] limb
 - (b) Varus [bow-legged] limb

- (c) Tibial varum
- (d) Disproportionate thigh and calf (e.g., large thigh and small calf)
- (e) Minimal muscle mass on which to suspend a brace
- (2) Skin changes, such as:
 - a. Excessive redundant soft skin
 - b. Thin skin with risk of breakdown (e.g., chronic steroid use)
- (3) Severe osteoarthritis (grade III or IV)
- (4) Maximal off-loading of painful or repaired knee compartment (example: heavy patient; significant pain)
- (5) Severe instability as noted on physical examination of knee.

Carrier relied on the IRO decision and the utilization reviews, both of which denied the requested knee brace.

The IRO doctor stated that “it was not clear why the injured employee would require an ACL brace. He has knee supports, including knee immobilizer, and the only definitive physical finding is instability to valgus stress of the knee.” The treating physician has noted that Claimant has an “injury to the medial collateral ligament with instability and requires the support that an ACL brace provides. The patient does not require full mobilization and does not require soft braces. He requires an ACL brace with support for the prohibited valgus movement which can only be provided with a true ACL brace.” Per the ODG, only one requirement needs to be met and the evidence was sufficient to establish that Claimant has met one of the required conditions: instability. The treating physician has opined that “the patient has definite instability to the MCL. He was prescribed an ACL brace, which offers the support needed to restrict any valgus displacement.” The evidence was sufficient to establish that Claimant has met at least one condition per the ODG. Petitioner overcame the IRO’s decision by the preponderance of evidence based medical evidence.

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

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 the (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers’ compensation insurance as a Self-Insurer.

- D. On (Date of Injury), Claimant sustained a compensable injury.
2. Carrier delivered to Claimant and Provider 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 has instability to his right knee as a result of the compensable injury sustained on (Date of Injury).
 4. An MCL/ACL brace 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 MCL/ACL brace is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to an MCL/ACL knee brace 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 Section 408.021 of the Act.

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

(NAME)
(ADDRESS)
(CITY) TEXAS (ZIPCODE)

Signed this 6th day of March, 2014.

Teresa G. Hartley
Hearing Officer