

MEDICAL CONTESTED CASE HEARING NO. 15022

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 not entitled to a left total knee arthroplasty for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On February 3, 2015, Carol A. Fougerat, 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 Independent Review Organization (IRO) that Claimant is not entitled to a left total knee arthroplasty for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared, by telephone, and was assisted by NA, ombudsman. Respondent/Carrier appeared and was represented by RL, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: None

The following exhibits were admitted into evidence:

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

Claimant's Exhibits: C-1 through C-7

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

DISCUSSION

Claimant sustained a compensable injury to her left knee on (Date of Injury), when she turned quickly while walking across a slick floor and her left knee buckled. Claimant has undergone multiple surgeries to both knees, including a right total knee arthroplasty. Claimant testified that she had undergone a left knee surgery in 1991, and that she has had four surgeries since the 1995 injury. Claimant testified that she underwent a left knee "scope" to clean out cartilage, bone spurs and tears in August 2013. Claimant testified that she only had one session of post-

operative physical therapy due to the denial by the Carrier for continued therapy. For the left knee condition, Claimant has received intra-articular corticosteroid injections and visco supplementation, and she testified that she takes medication on a daily basis for pain. Claimant's treating doctor has recommended a left total knee arthroplasty. The request was denied by the Carrier and subsequently referred to an IRO.

The IRO reviewer, identified as a board certified orthopedic surgeon, upheld the Carrier's denial. The IRO reviewer explained that the medical record documentation, along with the request to approve a surgical preauthorization for a left knee arthroplasty, does not include a description of disability. The IRO reviewer noted that Claimant was described as "active" and that her employer and job description were not provided. The IRO reviewer also stated that Claimant's range of motion is from five degrees hyperextension to 120 degrees of flexion and that patellofemoral joint crepitation is documented and subpatellar catching is described. Claimant's primary symptom is pain unrelieved by NSAID medication or intra-articular corticosteroid and hyaluronic acid injections. The IRO reviewer concluded by stating that the denial of this request should be upheld.

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 Criteria for a Total Knee Arthroplasty:

Criteria for **knee joint replacement** (If only **1** compartment is affected, a unicompartmental or partial replacement may be considered. If **2** of the 3 compartments are affected, a total joint replacement is indicated.):

1. Conservative Care: Exercise therapy (supervised PT and/or home rehab exercises). AND Medications. (**unless contraindicated: NSAIDs OR** Visco supplementation injections **OR** Steroid injection). PLUS
2. Subjective Clinical Findings: Limited range of motion (<90° for TKR). **AND** Nighttime joint pain. **AND** No pain relief with conservative care (as above) AND Documentation of current functional limitations demonstrating necessity of intervention. PLUS
3. Objective Clinical Findings: Over 50 years of age **AND** Body Mass Index of less than 40, where increased BMI poses elevated risks for post-op complications. PLUS
4. Imaging Clinical Findings: Osteoarthritis on: Standing x-ray (documenting significant loss of chondral clear space in at least one of the three compartments, with varus or valgus deformity an indication with additional strength). **OR** Previous arthroscopy (documenting advanced chondral erosion or exposed bone, especially if bipolar chondral defects are noted). (Washington, 2003) (Sheng, 2004) (Saleh, 2002) (Callahan, 1995).

Claimant maintains that she meets the ODG criteria for a left total knee arthroplasty, and that the surgery is medically necessary. Claimant cited medical records indicating that she has exhausted conservative care, she has subjective findings of limited range of motion and constant pain, she is (age) years old with no BMI issues and that the CT scan performed on October 27, 2014 shows objective findings of moderate to severe degenerative changes to the left knee. These medical records referred to by Claimant all pre-date the report of the IRO and were available for review by the IRO as documented in the report. Claimant presented only medical records dated prior to the IRO report and her testimony to rebut the determination of the IRO.

Based on the evidence presented at this hearing, Claimant failed to provide an evidence-based medical opinion contrary to the determination of the IRO. The preponderance of the evidence-based medical presented is not contrary to the IRO decision that Claimant is not entitled to a left total knee arthroplasty for treatment of the compensable injury of (Date of Injury).

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 (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation coverage with Insurance Company of the State of Pennsylvania, Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. The IRO determined that the proposed left total knee arthroplasty is not medically necessary for the compensable injury of (Date of Injury).
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 she meets the requirements of the ODG for a left total knee arthroplasty, and she failed to present other evidence-based medicine supporting the necessity for this procedure.
4. A left total knee arthroplasty 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 left total knee arthroplasty is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a left total knee arthroplasty 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA**, 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 3rd day of February, 2015.

Carol A. Fougerat
Hearing Officer