

MEDICAL CONTESTED CASE HEARING NO. 15054

**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.

**STATEMENT OF THE CASE**

On August 12, 2015, a medical contested case hearing was held 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 revision of the posterior cruciate ligament (PCL) reconstruction for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Claimant appeared and was assisted by JH, ombudsman. Petitioner DR, M.D., provided his testimony. Respondent/Carrier appeared and was represented by RJ, attorney.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: DR, M.D., Claimant

For Carrier: MVH, M.D.

The following exhibits were admitted into evidence:

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

Claimant's Exhibits C-1 through C-4

Carrier's Exhibits CR-A through CR-K

**BACKGROUND INFORMATION**

On (Date of Injury), Claimant was involved in a serious motor vehicle collision that resulted in numerous injuries. He has undergone three surgeries related to this claim, including a left knee surgery that involved, in part, a PCL reconstruction. Claimant has continued to have problems with his knee and his surgeon, DR, M.D., has requested to perform a second knee surgery. He requested a left knee synovectomy, medical meniscectomy and PCL revision/reconstruction.

The IRO board-certified orthopedic surgeon agreed with Dr. R that Claimant's synovectomy and meniscectomy were reasonable and necessary. He disagreed with the requested revision of the PCL reconstruction. Dr. R and Claimant requested this hearing to resolve the dispute.

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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to posterior cruciate ligament repair:

Under study. Injuries of the posterior cruciate ligament (PCL) of the knee frequently occur in automobile accidents and sports injuries, although they are less frequent overall than injuries of the anterior cruciate ligament (ACL). Some patients show significant symptoms and subsequent articular deterioration, while

others are essentially asymptomatic, maintaining habitual function. Management of PCL injuries remains controversial and prognosis can vary widely. Interventions extend from non-operative (conservative) procedures to reconstruction of the PCL, in the hope that the surgical procedure may have a positive effect in the reduction/prevention of future osteoarthritic changes in the knee. No randomized or quasi-randomized controlled studies were identified. (Peccin-Cochrane, 2005)

The ODG does not discuss a revision reconstruction. The ODG only lists PCL repair, as noted above, which has already been done. There is nothing in the ODG about PCL reconstruction, other than the above phrase, and nothing about PCL revision of a reconstruction. While the IRO doctor checked off that he relied in part on the ODG, there is nothing in the ODG that addresses this situation. The IRO doctor states there is no evidence of PCL reconstruction failure on the MRI and, even if there is PCL laxity, conservative care is acceptable for most patients.

Dr. R testified that he does not disagree with those statements made by the IRO doctor. He added the qualifying term of “most” does not apply in this case. He testified the wavy contour seen on the MRI is evidence of laxity in the PCL. He testified that when this MRI finding is combined with the positive posterior drawer test and lack of benefit from the conservative care that, in his expert medical opinion, Claimant needs a reconstruction revision.

MVH, M.D. testified for the Carrier in his capacity as a peer-review doctor and orthopedic surgeon. He opined there was no indication on the MRIs of any laxity or PCL failure and that it does not make sense to remove a PCL allograft that has not failed in hopes of a better outcome. He testified he would like to have seen more orthopedic test results than just the positive posterior drawer sign that Dr. R is relying on.

JS, M.D. served as the Division-appointed Designated Doctor to address MMI and impairment rating. He found Claimant to be not at MMI because, he opined, Claimant needed another knee surgery. While Dr. S noted Claimant’s MRI to show a posterior cruciate ligament tear that no other doctor has seen, including two orthopedic surgeons and the radiologist, he found on physical examination that Claimant has “obvious posterior cruciate ligament laxity” in the left knee. He opined the physical examination was “consistent with the diagnosis of multi-trauma with a persistent posterior cruciate ligament deficient knee.”

The URA doctors state there is no evidence of PCL ligament deficiency or injury. That opinion is not supported by the medical records. A tear may not be seen on the MRI, but Dr. R opined Claimant appeared to have “an attrition and/or absorption of his reconstructed PCL as there is significant extrusion.” Dr. R and Dr. S, the only doctors to examine Claimant, note PCL laxity based upon orthopedic tests.

While Dr. VH disagrees, the preponderance of the medical evidence shows Claimant has continuing PCL difficulties. While not asked to specifically address it, the Designated Doctor opined Claimant has significant PCL laxity issues. He may have the MRI impression wrong, but his opinion of laxity is based on his physical examination. Claimant has undergone physical therapy, including work hardening (where the continuing knee problems were observed). Continued conservative care has been ruled out as being beneficial. Dr. R met his burden of proof to establish the medical necessity of the reconstruction revision of the PCL.

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. 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), Claimant sustained a compensable injury.
  - D. The Independent Review Organization board-certified orthopedic surgeon determined Claimant should not have revision of the posterior cruciate ligament reconstruction.
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. Revision of the posterior cruciate ligament reconstruction 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 revision of the posterior cruciate ligament reconstruction is not health care reasonably required for the compensable injury of (Date of Injury).

**DECISION**

Claimant is entitled to revision of the posterior cruciate ligament reconstruction 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 §408.021.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701.**

Signed this 14<sup>th</sup> day of August, 2015.

KEN WROBEL  
Hearing Officer