

MEDICAL CONTESTED CASE HEARING NO. 16006

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 the ankle stabilization right fusion 3rd MCJ for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On October 29, 2015, Jeff Carothers, 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 the ankle stabilization right fusion 3rd MCJ for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SP, ombudsman. Respondent/Carrier appeared and was represented by PS, attorney.

DISCUSSION

Claimant sustained a compensable injury to his right ankle and foot on (Date of Injury) Claimant has treated with several health care providers for his continued complaints of pain in his right ankle and foot. This included treatment with JK, DPM. The medical records show that on June 1, 2015 Dr. K stated that Claimant had been in a boot for a month and taking Mobic daily for a month with little improvement. At that time, Dr. K recommended surgery on Claimant's right foot and ankle in the form of the services subject to the dispute in this case.

Carrier denied the request for the surgery recommended by Dr. K, and Claimant sought review by an IRO. The IRO reviewer, identified as a board-certified podiatrist and board-certified foot and ankle surgeon, upheld the Carrier's denial. The IRO reviewer referred to the recommendations in the Official Disability Guidelines (ODG) and, for the requested ankle stabilization (referred to as a lateral ligament ankle reconstruction), noted that physical therapy with immobilization or ankle brace and a rehabilitation program is appropriate and there should be subjective findings of instability of the ankle. The reviewer noted that the patient should have a positive anterior drawer test and positive stress x-rays indentifying motion at the ankle or subtalar joint of at least 15 degrees lateral opening at the ankle joint. The reviewer then stated that the requested stabilization would not be medically appropriate because there was no

indication the increased motion revealed in Claimant's stress x-rays was at least 15 degrees lateral opening. The IRO reviewer also stated that there was no documentation of a failure of physical therapy.

With regard to the requested ankle fusion, the IRO reviewer noted that according to the ODG there should be documentation of conservative care, including immobilization, pain that is aggravated by activity and weight bearing and relieved by lidocaine injections, objective findings of malalignment and decreased range of motion and positive x-rays confirming nonunion or malunion of a fracture. The IRO reviewer then stated that the fusion would not be supported because there was a lack of documentation of positive x-rays showing nonunion or malunion.

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 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."

For the requested ankle fusion, the ODG provides:

Recommended as indicated below. In painful hindfoot osteoarthritis the arthroscopic technique provides reliable fusion and high patient satisfaction with the advantages of a minimally invasive procedure. (Glanzmann, 2007) In stage III and IV adult acquired flatfoot due to posterior tibial tendon dysfunction, correcting and stabilizing arthrodeses are advised. (Kelly, 2001) Also see Surgery for calcaneal fractures; Surgery for posterior tibial tendon ruptures.

ODG Indications for Surgery -- Ankle Fusion:

Criteria for fusion (ankle, tarsal, metatarsal) to treat non- or malunion of a fracture, or traumatic arthritis secondary to on-the-job injury to the affected joint:

1. **Conservative Care:** Immobilization, which may include: Casting, bracing, shoe modification, or other orthotics. OR Anti-inflammatory medications. PLUS:
2. **Subjective Clinical Findings:** Pain including that which is aggravated by activity and weight-bearing. AND Relieved by Xylocaine injection. PLUS:
3. **Objective Clinical Findings:** Malalignment. AND Decreased range of motion. PLUS:
4. **Imaging Clinical Findings:** Positive x-ray confirming presence of: Loss of articular cartilage (arthritis). OR Bone deformity (hypertrophic spurring, sclerosis). OR Non- or malunion of a fracture. Supportive imaging could include: Bone scan (for arthritis only) to confirm localization. OR Magnetic Resonance Imaging (MRI). OR Tomography.

Procedures Not supported: Intertarsal or subtalar fusion, except for stage 3 or 4 adult acquired flatfoot.

For the requested ankle stabilization, the ODG provides:

Recommended as indicated below. This RCT concluded that, in terms of recovery of the preinjury activity level, the long-term results of surgical treatment of acute lateral ligament rupture of the ankle correspond with those of functional treatment. Although surgery appeared to decrease the prevalence of reinjury of the lateral ligaments, there may be an increased risk for the subsequent development of osteoarthritis. Surgical treatment comprised suture repair of the injured ligament(s) within the first week after injury, and a below-the-knee plaster cast was worn for six weeks with full weightbearing. Functional treatment consisted of the use of an Aircast ankle brace for three weeks. (Pihlajamäki, 2010) According to a Cochrane review, there is insufficient evidence to support any one surgical

intervention over another surgical intervention for chronic ankle instability, but it is likely that there are limitations to the use of dynamic tenodesis. (de Vries, 2011) Functional treatment is preferred over surgical therapy for lateral ankle injury, but surgical treatment can be considered on an individual basis. (Kerkhoffs, 2012) See also Surgery for ankle sprains; & Allograft for ankle reconstruction.

ODG Indications for Surgery -- Lateral ligament ankle reconstruction:

Criteria for lateral ligament ankle reconstruction for chronic instability or acute sprain/strain inversion injury:

1. **Conservative Care:** Physical Therapy (Immobilization with support cast or ankle brace & Rehab program). For either of the above, time frame will be variable with severity of trauma. PLUS
2. **Subjective Clinical Findings:** For chronic: Instability of the ankle. Supportive findings: Complaint of swelling. For acute: Description of an inversion. AND/OR Hyperextension injury, ecchymosis, swelling. PLUS
3. **Objective Clinical Findings:** For chronic: Positive anterior drawer. For acute: Grade-3 injury (lateral injury). [Ankle sprains can range from stretching (Grade I) to partial rupture (Grade II) to complete rupture of the ligament (Grade III).1 (Litt, 1992)] AND/OR Osteochondral fragment. AND/OR Medial incompetence. AND Positive anterior drawer. PLUS
4. **Imaging Clinical Findings:** Positive stress x-rays (performed by a physician) identifying motion at ankle or subtalar joint. At least 15 degree lateral opening at the ankle joint. OR Demonstrable subtalar movement. AND Negative to minimal arthritic joint changes on x-ray.

Procedures Not supported: Use of prosthetic ligaments, plastic implants, calcaneous osteotomies.

Claimant presented two letters of medical necessity from Dr. K, as well as his medical records, in support of his position that the requested surgical procedures met the applicable ODG criteria. With regard to the requested ankle fusion, Dr. K does state that Claimant had been treated with steroid injections and immobilization without relief from pain. He also states that Claimant experiences pain daily and does feel unstable with walking. However, Dr. K does not identify documentation of positive x-rays showing nonunion or malunion, nor does he identify any other documentation supporting that any other ODG criteria regarding the required Imaging Clinical Findings were met. As to the requested ankle stabilization procedure, Dr. K states that “stress films . . . showed a slight increase in motion compared to the contralateral side.” However, as stated by the IRO reviewer and set out by the applicable ODG criteria there must be showing of at least 15 degree lateral opening at the ankle. Neither the reports of Dr. K nor any of the other

medical evidence presented establish that Claimant has met this requirement. Additionally, neither the reports of Dr. K nor the other medical evidence establish that there had been a failure of physical therapy.

Considering the medical evidence in the record, the Hearing Officer determines that Claimant has not met his burden to overcome the decision of the IRO by a preponderance of evidence-based medical evidence. Therefore, it is determined that Claimant is not entitled to the ankle stabilization right fusion 3rd MCJ for 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 American Zurich Insurance Company, Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. The IRO determined that the ankle stabilization right fusion 3rd MCJ 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 does not meet the requirements of the ODG for the ankle stabilization right fusion 3rd MCJ.
4. The ankle stabilization right fusion 3rd MCJ 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 the ankle stabilization right fusion 3rd MCJ is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to the ankle stabilization right fusion 3rd MCJ 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 **AMERICAN ZURICH 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, TX 78701-3232**

Signed this 4th day of November, 2015.

Jeff Carothers
Hearing Officer