

MEDICAL CONTESTED CASE HEARING NO. 16016

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 right knee diagnostic arthroscopy, open medial plication, latter release for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on (Date of Injury), to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that a right knee diagnostic arthroscopy, open medial plication, latter release is not reasonably necessary health care for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by PA, ombudsman. Respondent/Carrier appeared and was represented by B J, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: J S, MD

For Carrier: B S, MD

The following exhibits were admitted:

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

Claimant's Exhibits CL-1 and CL-2

Carrier's Exhibits CR-1 through CR-11

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury). Carrier has accepted a torn ACL of the right knee, patellar dislocation of the right knee, and right knee internal derangement as components of the compensable injury. On July 22, 2015, J S, MD, Claimant's doctor, requested

preauthorization to perform a right knee diagnostic arthroscopy, open medial plication, and latter release. Carrier submitted the request to a utilization review agent (URA). The URA recommended that the request be denied. Claimant requested reconsideration of the preauthorization request. A second URA also recommended that the request be denied. Claimant then appealed Carrier's denial of preauthorization in accordance with Rule 133.308 of the Texas Administrative Code that provides for independent review of medical necessity disputes that are filed on or after June 1, 2012. The Department appointed IMED, Inc. as the IRO to review Carrier's denial. On October 28, 2015, the IRO upheld the denial of requested procedure and Claimant appealed that decision to a contested case hearing (CCH) in accordance with Rule 133.308(s). The contested case hearing was held on (Date of Injury). Dr. J S testified for Claimant. B S, MD testified for Carrier.

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, but not all health care recommended by a doctor is determined to be reasonably required. Texas Labor Code Section 401.011 (22a) defines "health care reasonably required" 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 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 in making decisions for the care of an individual patient. 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).

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).) Accordingly, the Division of Workers' Compensation has adopted treatment guidelines in Rule 137.100. Rule 137.100 also directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and provides that such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. The focus of any health care dispute starts with the health care set out in the ODG. 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 the CCH, the party appealing the IRO decision has the burden of overcoming the IRO's decision by a preponderance of evidence based medical evidence. (Rule 133.308(s).)

Dr. JS testified that Claimant has satisfied the ODG requirements for the proposed diagnostic arthroscopy and medial plication. Dr. JS testified that he had reviewed a number of imaging studies in Claimant's medical record, but had found no radiologic evidence of subluxation of Claimant's left knee. The subluxation is one of the reasons that Dr. JS believes that the diagnostic arthroscopy and medial plication are needed. Dr. BS testified that an open plication, as requested by Dr. JS, is used to address frequent, recurrent dislocation of the patella and acknowledged that patellar dislocation may or may not be seen on an imaging study because, at the time the imaging study is done, the patella may have returned to its normal position. But Dr. BS concluded that the requested procedure in this matter is contraindicated due to the lack of radiologic evidence of the postulated subluxation.

Dr. JS testified that he had not used the recommendations in the ODG in deciding to request preauthorization for the diagnostic arthroscopy and medial plication. Although it does not address medial plication, the ODG addresses diagnostic arthroscopy and provides the following recommendation:

Diagnostic Arthroscopy

Recommended as indicated below. Second look arthroscopy is only recommended in case of complications from OATS or ACI procedures, to assess how the repair is healing, or in individual cases that are ethically defensible for scientific reasons, only after a thorough and full informed consent procedure. (Vanlauwe, 2007) In patients with osteoarthritis, the value of MRI for a precise grading of the cartilage is limited, compared to diagnostic arthroplasty. When the assessment of the cartilage is crucial for a definitive decision regarding therapeutic options in patients with osteoarthritis, arthroscopy should not be generally replaced by MRI. The diagnostic values of MRI grading, using arthroscopy as reference standard, were calculated for each grade of cartilage damage. For grade 1, 2 and 3 lesions, sensitivities were relatively poor, whereas relatively better values were noted for grade 4 disorders. (von Engelhardt, 2010)

ODG Indications for Surgery™ -- Diagnostic arthroscopy:

Criteria for diagnostic arthroscopy:

1. Conservative Care: Medications. OR Physical therapy. PLUS
2. Subjective Clinical Findings: Pain and functional limitations continue despite conservative care. PLUS
3. Imaging Clinical Findings: Imaging is inconclusive.

(Washington, 2003) (Lee, 2004)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

The physician reviewer and Dr. BS both noted that inconclusive imaging was not present in Claimant's medical records and, therefore, the ODG criteria for diagnostic arthroscopy had not been met. Dr. JS acknowledged that the imaging studies recommended by the physical reviewer were not present at the time of his request and the IRO's review of Carrier's denial, but he nevertheless asserts that the criteria in the ODG for the proposed procedures had been met.

The knee and hip section of the ODG does not address medial plication. Neither Dr. JS nor Dr. BS cited any scientific literature that deals with the risks or benefits of the procedure. Dr. JS believes that the procedure should be authorized. His opinion is not shared by the utilization review agents, the IRO review doctor, or Dr. BS.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of the general acceptance of the theory and technique by the relevant scientific community; the expert's qualifications; the existence of literature supporting or rejecting the theory; the technique's potential rate of error; the availability of other experts to test and evaluate the technique; and the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990).

Dr. JS offered his opinion on the need for the requested arthroscopy and medial plication, but did not cite any evidence based medical evidence to support it. Dr. BS acknowledged that medial plication is used to treat frequent and recurrent patellar instability, but testified that he was unable to substantiate the need for the procedure based upon Claimant's medical records and imaging studies. The evidence presented that would tend to show that the requested procedures are consistent with evidence based medicine or, in the case of the medial plication, generally accepted standards of medical practice recognized in the medical community is not persuasive. The preponderance of the evidence is not contrary to the IRO determination that the proposed diagnostic arthroscopy and medial plication, latter release, is not reasonably required health care for the compensable injury of (Date of Injury).

After considering the evidence presented, the Hearing Officer finds that the preponderance of the evidence based medical evidence is not contrary to the IRO determination that diagnostic arthroscopy and medial plication, latter release, is not reasonably required medical care 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 as follows:
 - 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 insurance through (Carrier), Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. Carrier has accepted a torn ACL of the right knee, patellar dislocation of the right knee, and right knee internal derangement as components of the compensable 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. The preponderance of the evidence fails to establish that Claimant has met the criteria set forth in the ODG for diagnostic arthroscopy of the right knee.
4. Claimant failed to offer evidence based medical evidence that would tend to show that medial plication, latter release, is reasonably necessary health care for the compensable injury of (Date of Injury).
5. The evidence offered by Claimant failed to establish that the requested diagnostic arthroscopy and medial plication, latter release, is, at this time, clinically appropriate and considered effective for Claimant's injury and would be in accordance with best practices consistent with evidence based medicine or, for the medial plication where evidence based medicine is not available, the generally accepted standards of medical practice recognized in the medical community.

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 contrary to the decision of the IRO that a right knee diagnostic arthroscopy, open medial plication, latter release, is not reasonably required health care for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a right knee diagnostic arthroscopy, open medial plication, latter release 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 Section 408.021.

The true corporate name of the insurance carrier is **Carrier** and the name and address of its registered agent for service of process is

**RICHARD GERGASKO, PRESIDENT
6210 EAST HWY. 290
AUSTIN, TEXAS 78723**

Signed this 24th day of March, 2016.

A handwritten signature in black ink, appearing to read "Kenneth A. Huchton", followed by a long horizontal line extending to the right.

KENNETH A. HUCHTON
Hearing Officer