

MEDICAL CONTESTED CASE HEARING NO. 13087

**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.

**ISSUE**

A medical contested case hearing was held on April 16, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (hereinafter "IRO") that Claimant is not entitled to left knee unicompartmental replacement for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner / Claimant appeared and was assisted by EA, ombudsman. Respondent / Carrier appeared and was represented by CA, attorney.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Petitioner / Claimant: Petitioner / Claimant and Dr. O, M.D.

For Respondent / Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-3.

Petitioner / Claimant's Exhibits C-1 through C-20.

Respondent / Carrier's Exhibits CR-A through CR-D.

**BACKGROUND INFORMATION**

On (Date of Injury), Petitioner / Claimant worked for the employer, (Self-Insured), and sustained an injury to his left knee. He received medical treatment for his injury and has been seen by several health care providers including Dr. O, M.D., and Dr. H, M.D., on several occasions. Eventually, a request for left knee unicompartmental replacement was proposed. Such requested

treatment underwent utilization review and was denied on December 10, 2012 by Dr. S, M.D. Reconsideration was requested and such reconsideration was denied on January 8, 2013 by Dr. F, M.D., although Dr. F indicated that the requested treatment appeared certifiable. Petitioner / Claimant then appealed the denials to an IRO and the IRO reviewer upheld the previous adverse determinations. Consequently, Petitioner / Claimant appealed the IRO decision and this is the reason for the present discussion and decision.

## **DISCUSSION**

### **Medical Necessity**

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. TEX. LAB. CODE § 408.021. "Health care reasonably required" is defined 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. TEX. LAB. CODE § 401.011 (22a). Health care under the Texas Workers' Compensation system must be consistent with evidence-based medicine if that evidence is available. "Evidence-based medicine" means 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. TEX. LAB. CODE § 401.011 (18a). 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. TEX. LAB. CODE § 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with the Texas Labor Code. TEX. LAB. CODE § 413.017(1).

In accordance with the above statutory guidance, the Division has adopted treatment guidelines by rule. 28 Tex. Admin. Code § 137.100 (Division Rule 137.100). This Rule directs health care providers to provide treatment in accordance with the current edition of the *Official Disability Guidelines* (hereinafter "ODG") and that 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.

The pertinent provisions of the ODG applicable to this case are as follows, to wit:

#### **Unicompartmental knee replacement:**

Recommended as an option. See Knee joint replacement. Unicompartmental knee replacement is effective among patients with knee OA restricted to a single compartment. (Zhang, 2008) In this RCT, the early results demonstrated that the

unicompartmental knee replacement (UKR) group had less complications and more rapid rehabilitation than the total knee replacement (TKR) group. At five years there were an equal number of failures in the two groups but the UKR group had more excellent results and a greater range of movement. The 15 years survivorship rate based on revision or failure for any reason was 89.8% for UKR and 78.7% for TKR. The better early results with UKR are maintained at 15 years with no greater failure rate. (Newman, 2009)

### **Knee joint replacement:**

Recommended as indicated below. Total hip and total knee arthroplasties are well accepted as reliable and suitable surgical procedures to return patients to function. The most common diagnosis is osteoarthritis. Overall, total knee arthroplasties were found to be quite effective in terms of improvement in health-related quality-of-life dimensions, with the occasional exception of the social dimension. Age was not found to be an obstacle to effective surgery, and men seemed to benefit more from the intervention than did women. (Ethgen, 2004) Total knee arthroplasty was found to be associated with substantial functional improvement. (Kane, 2005) Navigated knee replacement provides few advantages over conventional surgery on the basis of radiographic end points. (Bathis, 2006) (Bauwens, 2007) The majority of patients who undergo total joint replacement are able to maintain a moderate level of physical activity, and some maintain very high activity levels. (Bauman, 2007) Functional exercises after hospital discharge for total knee arthroplasty result in a small to moderate short-term, but not long-term, benefit. In the short term physical therapy interventions with exercises based on functional activities may be more effective after total knee arthroplasty than traditional exercise programs, which concentrate on isometric muscle exercises and exercises to increase range of motion in the joint. (Lowe, 2007) Accelerated perioperative care and rehabilitation intervention after hip and knee arthroplasty (including intense physical therapy and exercise) reduced mean hospital length of stay (LOS) from 8.8 days before implementation to 4.3 days after implementation. (Larsen, 2008) In this RCT, perioperative celecoxib (Celebrex) significantly improved postoperative resting pain scores at 48 and 72 hrs, opioid consumption, and active ROM in the first three days after total knee arthroplasty, without increasing the risks of bleeding. The study group received a single 400 mg dose of celecoxib, one hour before surgery, and 200 mg of celecoxib every 12 hours for five days. (Huang, 2008) Total knee arthroplasty (TKA) not only improves knee mobility in older patients with severe osteoarthritis of the knee, it actually improves the overall level of physical functioning. Levels of physical impairment were assessed with three tools: the Nagi Disability Scale, the Instrumental Activities of Daily Living Scale (IADL)

and the Activities of Daily Living (ADL) Scale. Tasks on the Nagi Disability Scale involve the highest level of physical functioning, the IADL an intermediate level, and the ADL Scale involves the most basic levels. Statistically significant average treatment effects for TKA were observed for one or more tasks for each measure of physical functioning. The improvements after TKA were "sizeable" on all three scales, while the no-treatment group showed declining levels of physical functioning. (George, 2008) This study showed that total knee replacement is second the most successful orthopaedic procedure for relieving chronic pain, after total hip. The study compared the gains in quality of life achieved by total hip replacement, total knee replacement, surgery for spinal stenosis, disc excision for lumbar disc herniation, and arthrodesis for chronic low back pain. Hip replacement reduced pain to levels normal for age, reduced physical functioning to within 75% normal levels, and restored quality of life to virtually normal levels. Total knee replacement was the next most successful procedure, and it all but eliminated pain, improved physical functioning to 60% normal, and restored quality of life to within 65% of normal. (Hansson, 2008) A 6-week program of progressive strength training targeting the quadriceps femoris muscle group substantially improves strength and function following total knee arthroplasty for treatment of osteoarthritis, compared to patients who received standard of care therapy; however, addition of neuromuscular electrical stimulation (NMES) to the strength training exercise did not improve outcomes. (Pettersson, 2009) Knee replacement surgery is expensive but worth the cost, especially if performed by experienced surgeons, according to a recent study. Some \$11 billion is spent on 500,000 total knee replacements each year in the United States, and the number is projected to multiply seven times by 2030 because of the aging, overweight population. Over 90% knee replacements are successful, knee pain goes away and patients become more mobile. In the study, knee replacement surgery and subsequent costs added up to \$57,900 per patient, which was \$20,800 more than was spent on those who did not get the surgery. Those who got artificial knees lived more than a year longer in good health than those who did not, and the researchers calculated the added cost per year of good-quality life at \$18,300. (Losina, 2009) In a 7-year prospective study, patients with severe osteoarthritis who had total knee replacement had significant improvements in health-related quality of life, but health outcomes were negatively influenced by obesity and postdischarge complications, and women typically did not get as much benefit from surgery as do men. Overall, 76.8% were satisfied or very satisfied with their total knee replacement, and 79.5% said they would have the surgery again in similar circumstances. (Núñez, 2009) More than 95% of patients report that they are satisfied with the outcome of their total knee replacement 1 year after surgery. Factors that increased risk for

dissatisfaction were younger age, being female, valgus alignment of the knee, and posttraumatic arthritis. (Ayers, 2010) Patients undergoing total knee arthroplasty (TKA) should receive ongoing COX-2 Inhibitor therapy for 6 weeks after their procedure, according to this unpublished RCT. (Schroer, 2011) In deciding who should have knee joint replacement surgery for osteoarthritis, we need to balance potential benefits against potential risks, using the concept of capacity to benefit, that the benefits of overcoming functional limitations should considerably outweigh any likely risks or unintended consequences in an individual by a considerable margin for it to be indicated for that person. (Dieppe, 2011) The prevalence of knee pain and knee replacement surgeries has risen substantially during the last 20 years, but the reasons for the increase remain obscure. The rise in knee surgeries may be linked more to an increased awareness of knee pain, as opposed to aging, increased obesity, or radiographic knee osteoarthritis. The authors recommend treating physicians carefully consider, from the signs and symptoms of the patient presenting with knee pain, a broad differential diagnosis, since not all knee pain in middle-aged and older adults is the result of osteoarthritis. (Nguyen, 2011) Knee replacement surgery is a success story of modern medicine, yet consensus is lacking about the precise indications for the procedure. The number of total knee replacements (TKRs) in the United States increased from 31.2 per 100,000 person-years in the period from 1971 to 1976 to 220.9 per 100,000 person-years in 2008, for a total that year of more than 650,000 procedures. Demand for knee replacement will continue to grow in light of aging populations and rising obesity rates, which both portend higher rates of osteoarthritis. Outcomes data break down into those for TKRs vs those for partial-knee replacements (PKRs). Surgeons and their patients sometimes will choose a PKR for the sake of a more normal-feeling knee, less extensive surgery, and a lower risk for infection, knowing that they have the option of converting to a TKR if need be. However, partial replacement has a higher risk for revision surgery than total replacement, and a conversion TKR is more likely to require more follow-up than a primary TKR, according to registry data. In addition to recommending better patient selection and better reporting of outcomes, particularly as it relates to individual implant devices, the authors also call for new strategies to treat early-stage osteoarthritis in younger patients that will avoid the need for major surgery altogether. (Carr, 2012)

*Unicompartmental knee replacement:* Recommended as an option.

Unicompartmental knee replacement is effective among patients with knee OA restricted to a single compartment. (Zhang, 2008) In this RCT, the early results demonstrated that the unicompartmental knee replacement (UKR) group had less complications and more rapid rehabilitation than the total knee replacement (TKR) group. At five years there were an equal number of failures in the two

groups but the UKR group had more excellent results and a greater range of movement. The 15 years survivorship rate based on revision or failure for any reason was 89.8% for UKR and 78.7% for TKR. The better early results with UKR are maintained at 15 years with no greater failure rate. (Newman, 2009) Long-term studies are needed to appropriately define the role of less invasive unicompartmental surgical approaches. (Borus, 2008) Unicompartmental knee arthroplasty (UKA) and total knee arthroplasty (TKA) are both recommended for the treatment of medial compartment osteoarthritis in the varus knee. Citing the arduous rehabilitation and bone loss associated with traditional knee arthroplasty, some opt for UKA, especially in young, high-demand patients. (McAllister, 2008) With appropriate patient selection, UKAs are a successful option for patients with osteoarthritis. (Dalury, 2009)

*Bicompartmental knee replacement:* Not recommended. See separate entry for Bicompartmental knee replacement.

*Obesity:* After total knee arthroplasty (TKA) for osteoarthritis of the knee, obese patients fare nearly as well as their normal-weight peers. A British research team reports that higher BMI (up to 35) should not be a contraindication to TKA, provided that the patient is sufficiently fit to undergo the short-term rigors of surgery. TKA also halts the decline and maintains physical function in even the oldest age groups (> 75 years). (Cushnaghan, 2008) In this study, the rate of failure of total knee implants, at least up to 5 years after surgery, and the time to failure, were not influenced by patients' BMI, except for subjects affected by morbid obesity, but this group had a small sample size. Based on this evidence, however, it does not appear justified to give low priority to obese subjects for total knee arthroplasty, which would, as a result of restored ability to move, lead to weight loss. (Bordini, 2009) Obese patients presented for and underwent joint replacement surgery at a younger age as compared to nonobese patients. (Gandhi, 2010) Adverse events (eg, perioperative complications, post-op wound infections) occurred in 14.2% of the non-obese, 22.6% of the obese and 35.1% of the morbidly obese patients after total knee replacement. (Dowsey, 2010) A 2-year review of knee and hip replacement surgeries found that complication rates in obese patients were low, supporting doing the procedures even in the heaviest patients, but the review did show that hospital stays were longer in those who were obese than in those who were not. (Parks, 2010) Obese patients may have clinically significant weight loss after total joint arthroplasty, since their osteoarthritis had limited their mobility and ability to exercise. When weight was corrected for natural gain, the overall study population had a trend toward weight loss, and 19.9% of the study population had clinically significant weight loss. (Stets, 2010) Obese patients are nearly twice as likely to incur infection after a

total knee replacement, more than 2 times likely to incur deep infection, and slightly more likely to require a surgical revision than those who are not obese, according to a meta-analysis, but even with an elevated complication rate, total knee replacements provide an important improvement for patients with a high BMI. (Kerkhoffs, 2012)

*Minimally invasive total knee arthroplasty:* No significant benefit was seen in using a minimally invasive surgical technique over a standard traditional technique for total knee arthroplasty, but the study did not focus on quality-of-life outcomes (eg, length of hospital stay, reliance on pain medications, and the need for inpatient rehabilitation after discharge), in which the minimally invasive approach is purported to show an advantage. (Wülker, 2010)

*Bilateral knee replacement:* The safety of simultaneous bilateral total knee replacement remains controversial. Compared with staged bilateral or unilateral total knee replacement, simultaneous bilateral total knee replacement carries a higher risk of serious cardiac complications, pulmonary complications, and mortality. (Restrepo, 2007) Recommend that congestive heart failure and pulmonary hypertension be contraindications for bilateral total knee arthroplasty (BTKA), but not age *per se*. BTKA is seen as offering advantages over staged unilateral knee replacement surgery, including reduced time in the hospital, decreased costs, and a faster return to active life. The procedure also has been shown, however, to carry an increased risk for morbidity and mortality compared with unilateral knee replacement, with overall incidence of major in-hospital complications and mortality of 9.5%. Patients with the highest risk for adverse outcomes were those with congestive heart failure (odds ratio [OR], 5.5) compared with those without comorbidities, and those with pulmonary hypertension (OR, 4.1). Other risk factors included older age, with patients who were 65 to 74 years old or older than 75 years having about twice the likelihood of complications compared with patients 45 to 65 years old. Men also showed a 50% greater risk for complications than women. Older age, however, should not necessarily rule out patients who can otherwise benefit from bilateral knee replacement, and age by itself will be a risk factor in any kind of surgery. Factors that can increase the risk with congestive heart failure include bone particles and marrow entering the bloodstream to embolize in the pulmonary vasculature and other organs. (Memsoudis, 2011)

*Revision total knee arthroplasty* is an effective procedure for failed knee arthroplasties based on global knee rating scales. (Saleh, 2002) It would be recommended for failure of the originally approved arthroplasty.

**ODG Indications for Surgery: -- 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: Medications. AND (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 35, where increased BMI poses elevated risks for post-op complications. PLUS
4. Imaging Clinical Findings: Osteoarthritis on: Standing x-ray. OR Arthroscopy.

(Washington, 2003) (Sheng, 2004) (Saleh, 2002) (Callahan, 1995)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).  
See also Skilled nursing facility LOS (SNF).

In the instant case, the utilization review doctors denied the requested treatment and the IRO reviewer upheld the denial of the requested treatment. The IRO reviewer who is board certified in orthopedic surgery reviewed Petitioner / Claimant's records and opined that the proposed procedure was not indicated as medically necessary based on the clinical data provided. Thereafter, the IRO reviewer cited medical judgment, clinical experience and expertise in accordance with accepted medical standards and the ODG in upholding the denials of the requested treatment.

When weighing expert testimony, the hearing officer must first determine whether the doctor rendering an expert opinion is qualified to offer such. In addition, the hearing officer must determine whether the opinion is relevant to the issues at bar and whether it is based upon a reliable foundation. An expert's bald assurance of validity is not enough. *See Black v. Food Lion, Inc.*, 171 F.3d 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. *See Black*, 171 F.3d 308. In determining reliability of the evidence, the hearing officer must consider the evidence in terms of

- (1) general acceptance of the theory and technique by the relevant scientific community;
- (2) the expert's qualifications;

- (3) the existence of literature supporting or rejecting the theory;
- (4) the technique's potential rate of error;
- (5) the availability of other experts to test and evaluate the technique;
- (6) the clarity with which the theory or technique can be explained to the trial court; and
- (7) 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) *aff'd*, 824 S.W.2d 568 (Tex. Crim. App. 1992).

Additionally, "[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." *See* Division Rule 133.308 (t). "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." *Id.*

Accordingly, Petitioner / Claimant, as the party appealing the IRO decision, had the burden of overcoming the IRO decision by a preponderance of evidence-based medical evidence. Petitioner / Claimant presented documentary and testimonial evidence including the testimony of Dr. O, M.D. Dr. O testified that the requested treatment is medically reasonable and necessary and explained such in his letters and records that are contained in the evidence presented. As such, there was sufficient medical explanation that the requested treatment was medically reasonable and necessary. Therefore, the preponderance of the evidence is contrary to the decision of the IRO that Petitioner / Claimant is not entitled to left knee unicompartmental replacement for the compensable injury of (Date of Injury).

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), Petitioner / Claimant was an employee of (Self-Insured), the Employer.
  - C. On (Date of Injury), Employer provided workers' compensation with as a self-insurer.
  - D. On (Date of Injury), Petitioner / Claimant sustained a compensable injury.

2. Respondent / Carrier delivered to Petitioner / Claimant a single document stating the true corporate name of Respondent / Carrier, and the name and street address of Respondent / Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The IRO determined that Petitioner / Claimant is not entitled to left knee unicompartmental replacement for the compensable injury of (Date of Injury).
4. Left knee unicompartmental replacement 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 Petitioner / Claimant is not entitled to left knee unicompartmental replacement for the compensable injury of (Date of Injury).

### **DECISION**

Petitioner / Claimant is entitled to left knee unicompartmental replacement for the compensable injury of (Date of Injury).

### **ORDER**

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules.

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

**(SELF-INSURED)**  
**(STREET)**  
**(CITY), TX (ZIP CODE)**

Signed this 25<sup>th</sup> day of April 2013.

Julio Gomez, Jr.  
Hearing Officer