

MEDICAL CONTESTED CASE HEARING NO. 13091

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 contested case hearing was held on May 13, 2013 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to right knee examination under anesthesia and arthroscopy with lateral release for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by CN, ombudsman.
Respondent/Carrier appeared and was represented by RT, attorney.

BACKGROUND INFORMATION

Claimant presents documentary evidence from GS, M.D. to show she is entitled to the requested services. Dr. S performed surgery on Claimant following her compensable injury of (Date of Injury) and now recommends right knee examination under anesthesia and arthroscopy with lateral release for the compensable injury.

On February 13, 2013 Dr. S wrote that an x-ray taken that day confirmed an abnormal patellar tilt in Claimant. He noted that the x-ray showed the lateral tilt of the patella on the sunrise view of the knee.

Dr. S's opinion written on February 13, 2013 was in response to three doctors who wrote that in their review of Claimant's medical records, they could not find confirmation of an abnormal patellar tilt. The doctors wrote criteria for the requested procedure found in the Official Disability Guidelines (ODG) included the need for confirmation of an abnormal patellar tilt by x-ray, computed tomography or magnetic resonance imaging.

Carrier's evidence includes a report from AGT, M.D., Dr. T, a radiologist, reviewed the x-ray taken by Dr. S's office. On his first review, he noted mild demineralization of the medial patellar border. On the second review, he wrote that he did not see any obvious patellar tilting, commenting that the lateral patellar osteophyte would limit any such observation.

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 (t), "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."

The ODG provides the following for lateral retinacular release:

Criteria for lateral retinacular release or patella tendon realignment or maquet procedure:

1. **Conservative Care:** Physical therapy (not required for acute patellar dislocation with associated intraarticular fracture). OR Medications. PLUS
2. **Subjective Clinical Findings:** Knee pain with sitting. OR Pain with patellar/femoral movement. OR Recurrent dislocations. PLUS
3. **Objective Clinical Findings:** Lateral tracking of the patella. OR Recurrent effusion. OR Patellar apprehension. OR synovitis with or without crepitus. OR Increased Q angle > 15 degrees. PLUS

4. **Imaging Clinical Findings:** Abnormal patellar tilt on: x-ray, computed tomography (CT), or MRI.

The x-ray or a report of the x-ray relied upon by Claimant was not seen by any of the three doctors who were asked to review Claimant's medical records and give opinions on whether the requested services should be approved or denied. The three doctors did not see the x-ray or writing of Dr. S because the imaging and writing were done at a time after the three doctors reviewed the medical records. In addition, the only radiologist who reviewed the imaging did not note a tilt that Dr. S wrote about. Claimant's evidence was not convincing.

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 the (Employer).
 - C. The Independent Review Organization determined that the requested services were not reasonable and necessary health care services 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. Clinical imaging did not confirm that Claimant had an abnormal patellar tilt and such finding is a criteria in the ODG for the requested surgery.
4. Right knee examination under anesthesia and arthroscopy with lateral release 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 Independent Review Organization that Claimant is not entitled to right knee examination under anesthesia and arthroscopy with lateral release for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to right knee examination under anesthesia and arthroscopy with lateral 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 §408.021.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person, the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15th STREET
WILLIAM P. CLEMENTS, JR.
STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701**

For service by mail, the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777**

Signed this 15th day of May, 2013.

CAROLYN F. MOORE
Hearing Officer