

MEDICAL CONTESTED CASE HEARING NO. 14012

**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.

**ISSUES**

A contested case hearing was held on July 18, 2013, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is entitled to a diagnostic arthroscopy of the right knee for the compensable injury of (Date of Injury)?

Due to time constraints, the CCH was continued to October 07, 2013, and the record was closed on that date.

**PARTIES PRESENT**

Petitioner/Self-Insured appeared and was represented by CE, attorney.  
Respondent/Claimant appeared and was assisted by CR, ombudsman.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: KW, M.D.

For Self-Insured: RR, 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-6

Self-Insured's Exhibits CR-A through CR-L

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on (Date of Injury), that includes both knees. He has undergone bilateral arthroscopy of the knees, the left on December 04, 2012, and the right on April 26, 2011. The left knee has responded well but Claimant has continuing pain in the right knee. Claimant's surgeon requested to do a diagnostic arthroscopy of the right knee. Self-

Insured denied the request. On March 18, 2013, an IRO board-certified orthopedic surgeon reviewed the case and determined Claimant should have the surgery. The surgery was performed on April 23, 2013.

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 a diagnostic arthroscopy of the knee:

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)

RR, M.D. testified that the request for the surgery did not meet the Official Disability Guidelines because it was not for a second look at an OATS or ACI procedure. (These are procedures to repair cartilage.) Also, there is a lack of evidence that the imaging studies were inconclusive. He testified none of the imaging studies or prior arthroscopy were inconclusive and that all of those procedures showed the ACL and PCL were unremarkable for any damage, especially the operative report when the first surgeon performed an arthroscopy and saw the inside of Claimant's knee.

KW, M.D. testified that despite two MRIs, an arthrogram and a prior arthroscopy, he opined Claimant had pathologies in his knee that had not shown up in any of those procedures. He testified Claimant was prescribed medications, a cortisone shot and physical therapy without any benefit. He testified MRIs are not 100% accurate. He also testified this was not a second look arthroscopy and that those parameters did not apply. He testified Claimant did not have complications from OATS or ACI procedures, this was not a procedure done to assess how the repair is healing, and this was not done for scientific reasons.

The request was for a diagnostic arthroscopy of the right knee. The Official Disability Guidelines states, "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." Dr. W testified none of these reasons applied. He stated his operation was too far removed in time to be a second look arthroscopy. Other than time passing, Dr. W did not explain how this was not a second look arthroscopy since an arthroscopy was already done on April 26, 2011. On that first operative report, it is noted that

the anterior and posterior cruciate ligaments were intact and the menisci were within normal limits and intact. It was noted the posterior cruciate ligament had a nonpathological tear.

On July 11, 2012, a decision and order was written determining the compensable injury did not extend to or include a right knee meniscal tear. Part of the April 23, 2013, surgery performed by Dr. W included a partial medial and lateral meniscectomy. This aspect of the surgery was performed on a noncompensable injury.

Dr. W did a procedure that was not recommended by the Official Disability Guidelines. The Official Disability Guidelines states a diagnostic arthroscopy (which is what Dr. W's operative report says he did – a right knee diagnostic arthroscopy) is to be done only for specific indications. None of those apply to this case. Additionally, three doctors, not including the radiologists, read the MRIs reports, arthrogram report and prior arthroscopy report to show clear imaging or findings. None of those were inconclusive. The IRO doctor determined the three criteria were met for the arthroscopy but he did not consider the recommendation of the Official Disability Guidelines – that this procedure is not recommended but for the specific exceptions, which do not apply in Claimant's case per Dr. W.

Self-Insured met its burden of proof that the diagnostic arthroscopy is not healthcare reasonably required for the compensable 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), Claimant was the employee of the (Employer), Employer.
  - C. On (Date of Injury), Claimant sustained a compensable injury.
  - D. The Independent Review Organization board-certified orthopedic surgeon determined Claimant should have a diagnostic arthroscopy of the right knee.
2. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured, and the name and street address of Self-Insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. A diagnostic arthroscopy of the right knee 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 contrary to the decision of the IRO that a diagnostic arthroscopy of the right knee is health care reasonably required for the compensable injury of (Date of Injury).

## **DECISION**

Claimant is not entitled to a diagnostic arthroscopy of the right knee for the compensable injury of (Date of Injury).

## **ORDER**

Self-Insured 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**(SELF-INSURED)**  
**(STREET ADDRESS)**  
**(CITY), TX (ZIPCODE).**

Signed this 08<sup>th</sup> day of October, 2013.

**KEN WROBEL**  
Hearing Officer