

**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 the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a left knee arthroscopy with ACL reconstruction for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

A contested case hearing was held on July 16, 2015 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 a left knee arthroscopy with ACL reconstruction for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was represented by JS, attorney.

Respondent/Carrier was represented by RT, attorney.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: None.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits: HO-1.

Claimant's Exhibits: C-1 through C-11.

Carrier's Exhibits: None.

## DISCUSSION

It is undisputed that on (Date of Injury), Claimant was employed as a maintenance and grounds worker with the (Employer), when he sustained a compensable injury after he fell from a ladder.

A contested case hearing was held on November 12, 2014, and the undersigned Hearing Officer determined that the compensable injury extended to and included a Grade 2-3 anterior cruciate ligament sprain of the left knee, Claimant had not reached maximum medical improvement, and Claimant did have disability from August 29, 2014 and continuing through the date of the hearing. Claimant had surgery in April of 2014 to his right knee, and surgery to his left knee has been recommended. The requested procedure was denied by the Carrier's utilization review agents and referred to the IRO, who upheld the Carrier's denial.

The IRO reviewer, a physician board certified in orthopedic surgery, noted the multiple medical records he reviewed, including the MRI study of the left ankle. The reviewer opined that "[t]here was no tear of the ACL documented. As per the ODG, the imaging clinical findings required an ACL disruption seen on either MRI, arthroscopy or arthrogram. Thus, the request for left knee arthroscopy with ACL reconstruction does not meet the standards and ODG criteria and is therefore considered not medically necessary or appropriate or this claimant."

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."

The following is noted in the ODG for ACL reconstruction:

***ODG Indications for Surgery™***-- Anterior cruciate ligament (ACL) reconstruction:

1. **Conservative Care:** (This step not required for acute injury with hemarthrosis.) Physical therapy. OR Brace. PLUS
2. **Subjective Clinical Findings:** Pain alone is not an indication for surgery. Instability of the knee, described as "buckling or give way". OR Significant effusion at the time of injury. OR Description of injury indicates rotary twisting or hyperextension incident. PLUS
3. **Objective Clinical Findings** (in order of preference): Positive Lachman's sign. OR Positive pivot shift. OR (optional) Positive KT 1000 (>3-5 mm = +1, >5-7 mm = +2, >7 mm = +3). PLUS
4. **Imaging Clinical Findings:** (Not required if acute effusion, hemarthrosis, and instability; or documented history of effusion, hemarthrosis, and instability.) Required for ACL disruption on: Magnetic resonance imaging (MRI). OR Arthroscopy OR Arthrogram.

(Washington, 2003) (Woo, 2000) (Shelbourne, 2000) (Millett, 2004)

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

Claimant relies on the medical records and written opinions provided by his treating physician as to why the recommended surgery meets the criteria set out in the ODG. The treating physician has previously opined that the MRI of the left knee is not limited to a strain and that compensable injury included a grade II to III ACL ligament sprain of the left knee due to the fall he sustained while performing his job duties. He explained that the "MRI of the left knee which demonstrates acute abnormality of the ACL indicating at least a grade II partial tear of the ACL. However, it is my opinion that the patient has a scarred down complete tear of the ACL and it is the equivalent of nonfunctioning, and presents with instability. The patient has recurrent

problems of giving out of the knee, effusion of the knee and acute knee pain, particularly over the anterolateral compartment. These are all consistent with a symptomatic ACL tear.”

In response to the IRO’s adverse determination, the treating physician acknowledged that there were discrepancies in the medical records as a result of his error in documenting the injury. He noted that this was a “complicated” case, and at the time of the Claimant’s initial visit, “the major complaint was the right knee, although, the left knee, shoulder and neck were also significant injuries. The right knee required immediate attention and was addressed...it became evident that the left knee had significant problems and clinical instability, which is therefore, what we have been addressing from that point.”

At the treating doctor’s request, Claimant did have KT-1000 testing through the therapy department showing a 4mm difference. He explained that this testing was consistent with, at least, a partial ACL tear. He further documented that Claimant continued to experience difficulty walking and laxity of the left knee, despite having physical therapy, bracing, and medication.

The medical evidence presented in support of the necessity of the proposed procedure is sufficient and the treating physician’s opinions were persuasive. Therefore, the preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to a left knee arthroscopy with ACL reconstruction 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), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers’ compensation insurance with State Office of Risk Management, Carrier.
  - D. On (Date of Injury), Claimant sustained a 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 IRO determined that the requested service was not reasonable and necessary health care for the compensable injury of (Date of Injury).
4. Claimant did present evidence-based medical evidence contrary to the IRO decision.
5. A left knee arthroscopy with ACL reconstruction 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 a left knee arthroscopy with ACL reconstruction is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is entitled to a left knee arthroscopy with ACL reconstruction for the compensable injury of (Date of Injury).

### **ORDER**

Carrier is 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:

**STEPHEN S. VOLLBRECHT, 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:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777**

Signed this 21<sup>st</sup> day of July, 2015.

Teresa G. Hartley  
Hearing Officer