MEDICAL CONTESTED CASE HEARING NO. 09019

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 benefit contested case hearing was held on October 8, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to outpatient surgical service for the left knee, specifically tibial tubercle transfer?

PARTIES PRESENT

Requestor, (Claimant), appeared and was assisted by ombudsman, JA. Respondent, Commerce and Industry Insurance Company, appeared and was represented by CF, attorney.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury while working as a lab technician. A heavy glass door struck him and caused him to fall, landing with his full weight on his left knee. Claimant underwent conservative treatment, including physical therapy and injections, and ultimately underwent several surgical procedures to treat compensable injury. He initially had arthroscopic knee surgery, but ultimately required total knee replacement on November 29, 2006. He developed subluxing of the left patella and underwent lateral release and medial placation on June 6, 2007.

Records from his treating orthopedic surgeon, Dr. P, show that following the last surgery, he continued to occasionally experience slipping of the patella, and started noticing that the patella was "jumping out of track" again in August of 2007. Dr. P's records show that the treatment plan included efforts to strengthen the medial quadriceps.

On October 16, 2007, Dr. P noted that clinical examination showed that the patella lay laterally and had stretched from the medial aspect. He stated that it was quite possible that a tibial tubercle transfer might be necessary, but in the meantime Claimant was to continue with home exercise.

In November of 2007, when the lateral subluxation continued, Dr. P recommended the tibial tubercle transfer medially and slightly distally, but recommended that Claimant get a second orthopedic opinion (which second opinion was never obtained).

Dr. P requested the procedure through the preauthorization process on January 10, 2008.

The initial utilization review doctor, Dr. W, a board certified orthopedic surgeon, noted that the

Official Disability Guidelines (*ODG*) does not address the requested procedure. He noted that there was no explanation in the records of the orientation or rotation of the knee components, and opined that it was unclear if Claimant's problems were related to alignment issues or malrotation of the knee replacement components. The doctor cited those reasons as well as a lack of information regarding the nature of conservative measures to address the problems in denying the requested procedure.

The utilization review doctor who reviewed the requested procedure on reconsideration, Dr. S (also an orthopedic surgeon), cited the *ODG* chapter regarding treatment of the knee and opined that since the exact cause of the subluxing patella had not been definitively pinpointed, the requested services could not be considered reasonable or medically necessary.

An IRO reviewer and board certified orthopedic surgeon, also noted that the *ODG* does not address the requested procedure. For that reason, the reviewer opined that it was important to evaluate the knee replacement components to determine whether they were the cause of the postoperative patellar subluxation problem. The IRO doctor noted no mention in treating surgeon's records of significant quadriceps atrophy or other causes in sufficient detail for a decision to be made regarding the necessity for the proposed procedure. The reviewer concluded that it was impossible to concur with the requested services.

A peer review doctor, Dr. L, also a board certified orthopedic surgeon, initially stated that the question of medical necessity of the tibial tubercle transfer was beyond the scope of his review. In a second report, however, he stated that there was no evidence that Claimant had any patellofemoral instability or abnormalities prior to surgery, and concluded that the problems were likely due to component malposition.

DISCUSSION

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. **Section 401.011(22-a)** 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by **Section 401.011(18-a)** as 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 about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG),* and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

ODG

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*. As all of the doctors who have reviewed this case have correctly noted, the *ODG* does not address the proposed procedure. "Health care reasonably required" means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

As the *ODG* does not address the requested treatment for the knee, an analysis of the evidence-based medicine supporting the requested treatment is required.

Other Evidence Based Medicine

Dr. P, in response to the various denials and specifically to the opinions of Dr. L, provided explanation and medical articles in support of the proposed procedure. He explained that subluxation of the patella is a common sequelae of total knee replacement, which can be caused by multiple factors. He opined that, in Claimant's case, the cause was soft tissue imbalance and a minimal degree of rotational position of either the femur or the tibial component. He cited an article from the *Journal of the American Academy of Orthopedic Surgeons* listing the possible causes of patella maltracking after total knee arthroplasty. ***Unstable Patella After Total Knee Arthroplasty: Etiology, Prevention and Management***, J Am Acad Orthop Surg, Vol 11, No 5, September/October 2003, 364-371. That article noted that nonsurgical treatment for patellar maltracking is generally unsuccessful and, in the absence of component malposition, lateral patellar retinacular release with lateral advancement of the vastus medialis obliquus muscle (the procedure Claimant had after his total knee replacement) or tibial tubercle transfers were used.

A second article cited by Dr. P, ***Effect of medial displacement of the tibial tubercle on patellar position after rotational malposition of the femoral component in total knee arthroplasty***, J Arthroplasty 1996 Jan; 11(1):104-10, discussed the success of the requested procedure in situations involving malposition of the femoral component in total knee arthroplasty.

Dr. L, the peer review doctor, opined that as Dr. P had not identified the cause of the subluxing patella, the requested procedure was not warranted and not supported by the articles Dr. P had cited. Dr. L did, however, acknowledge that the articles cited were considered to be evidence-based medicine.

In response to the concerns of Dr. L, Dr. P stated that there was no radiological evidence of malposition of the knee components. He stated that the subluxing problem was due to soft tissue atrophy and weakness of the quadriceps, which conditions were documented in his clinical notes. Finally, Dr. P stated that the doctors who had not examined Claimant were unable to note the results of a specific test, in particular clinical observation that the patella does not sublux on medial rotation of the tissue. Dr. P stated that test was the best evidence of the need and possible success of the tibial transfer in Claimant's case.

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable

foundation. An expert's bald assurance of validity is not enough. *See* ***Black v. Food Lion, Inc.***, 171 F.3rd 308 (5th Cir. 1999); ***E.I. Du Pont De Nemours and Company, Inc. v. Robinson***, 923 S.W.2d 549 (Tex. 1995). When determining reliability, 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).

The treatment plan set out and discussed in detail by Dr. P is supported by credible scientific studies, including peer-reviewed medical literature. Dr. P, a Fellow of the American Academy of Orthopedic Surgeons, is qualified to give the opinion he rendered; and, he explained the proposed procedure in great detail and with specific reference to evidence-based, peer reviewed medical articles.

The opinion of Dr. P, in combination with the evidence-based medicine articles referenced, is relevant to the issue in the case and based upon a reliable foundation. The *ODG* is silent on the use proposed procedure for treatment of the knee, however, it does not prohibit that treatment.

Claimant has shown, through evidence-based medicine, that the requested service herein is health care reasonably required by the nature of the compensable injury. As such, the preponderance of the evidence is contrary to the decision of the IRO that the claimant is not entitled to outpatient surgical services for a knee, specifically, tibial tubercle transfer for the compensable injury of (Date). 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), Claimant was the employee of (Employer) when he sustained a compensable injury.

   C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of (Date).

2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Dr. P, an orthopedic surgeon, recommended tibial tubercle transfer of the left knee as treatment for the compensable injury.

4. The ODG does not address the requested procedure.

5. The IRO decision upheld the Carrier's denial of the requested procedure.

6. The procedure proposed by Dr. P is supported by credible scientific studies, including peer-reviewed medical literature.

7. Outpatient surgical services for the left knee, specifically tibial tubercle transfer is health care reasonably required for the compensable injury of (Date).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.

2. Venue was proper in the (City) Field Office.

3. The preponderance of the evidence is contrary to the decision of IR0 outpatient surgical services for the left knee, specifically tibial tubercle transfer, is not health care reasonably required for the compensable injury of (Date).

DECISION

Claimant is entitled to outpatient surgical services for the left knee, specifically tibial tubercle transfer, for the compensable injury of (Date).

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 Section 408.021.

The true corporate name of the insurance carrier is **COMMERCE AND INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701

Signed this 8th day of October, 2008.

Erika Copeland
Hearing Officer