MEDICAL CONTESTED CASE HEARING NO. 09212
M6-09-16399-01

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 May 28, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is entitled to a right knee arthroscopy with ACL reconstruction for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Carrier appeared and was represented by ST, attorney. Respondent/Claimant did not appear and did not respond to the Division's 10-day letter.

BACKGROUND INFORMATION

Although properly notified, Claimant failed to appear for the medical contested case hearing scheduled for 1:00 p.m. on May 28, 2009. A letter advising that the record would be held open for ten days to afford the Claimant the opportunity to respond and request that the hearing be rescheduled to permit him to present evidence on the disputed issue was mailed to the Claimant on June 1, 2009. The Claimant failed to respond to the Division's 10-day letter and, on June 11, 2009, the record was closed.

Claimant sustained a compensable right knee injury when he slipped and fell on _____. Claimant was diagnosed with medial and lateral meniscus tears of the right knee. Claimant underwent a right knee arthroscopy and debridement on July 25, 2008. Dr. B requested a right knee arthroscopy with ACL reconstruction because the arthroscopy performed on July 25, 2008 revealed laxity of the ACL. The procedure was denied twice by the carrier's URA doctors, Dr. T and Dr. Y, and the request was appealed to the Independent Review Organization (IRO). The IRO, Board Certified in Orthopedic Surgery, overturned the carrier's adverse determinations.

The IRO provided the following analysis and explanation of its decision: "The patient does have clinical and arthroscopic evidence of laxity of the ACL. Although the patient does have chondromalacia, it is stated that the chondromalacia changes were only grade I to II in the medial femoral condyle and the rest of his knee was fine. There was no advance chondromalacia elsewhere. I am satisfied that all operative choices have been explored and I think it is within reason to move forward with an ACL reconstruction and this is supported by the ODG. The patient has undergone adequate conservative treatment and the requested right knee arthroscopy with ACL reconstruction is reasonable and necessary."

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. Section 401.011(18-a) defines "evidence-based medicine" 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 healthcare reasonably required as mandated by the above-referenced sections of the Texas Labor Code. The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the ODG.

With regard to anterior cruciate ligament (ACL) reconstruction, the ODG provides as follows:

> Recommended as indicated below. An examination of all studies that compared operative and conservative treatment of anterior cruciate ligament (ACL) rupture found that outcomes in the operative groups were generally better than in the conservative groups for younger patients, but outcomes are worse in older patients (age beyond 50-60 years). (Hinterwimmer, 2003) (Linko-Cochrane, 2005) Morbidity is lower for hamstring autografts than for patellar tendon autografts used for ACL reconstruction. (Biau, 2006) The use of bracing after anterior cruciate ligament (ACL) reconstruction cannot be rationalized by evidence of improved outcome including measurements of pain, range of motion, graft stability, or protection from injury. (Wright, 2007) Most of the roughly 100,000 ACL reconstructions performed each year are for younger patients. Although age has been considered a relative contraindication for ACL surgery in the past, active older patients may respond well to this surgery and should not be ruled out as surgical candidates based solely on their age. It is important to look at their comorbidities, e.g., malalignment and osteoarthritis, because they predict potential problems. (Wulf, 2008) Anterior cruciate ligament (ACL) reconstruction using an allograft has a high failure rate in young, active adults. While there are obvious benefits of using the cadaver ligament, like avoiding a second surgical site on the patient, a quicker return to work and less postoperative pain, for the young patient who is very active, it may not be the right choice. (Luber, 2008) In patients with ACL injury willing to moderate activity level to avoid reinjury, initial treatment without ACL reconstruction should be considered. All ACL-injured patients need to begin knee-specialized physical therapy early (within a week) after the ACL injury to learn more about the injury, to lower the activity level while performing neuromuscular training to restore the functional stability, and as far as possible avoid further giving-way or re-injuries in the same or the other knee, irrespectively if ACL is reconstructed or not. (Neuman, 2008) Patients with anterior cruciate ligament (ACL) injuries may not need surgery. At 2-5 years after injury, muscle strength and function were similar in patients treated with physical therapy and surgical reconstruction or physical therapy only. ACL injuries are associated with the development of osteoarthritis (OA) in the long

term, and there is no evidence to suggest that reconstruction of the ACL prevents or reduces the rate of early-onset OA. On the contrary, the prevalence of OA may be even higher in patients with reconstructed ACL than in those with nonreconstructed ACL. (Ageberg, 2008)

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)

To meet their burden of proof, the Petitioner/Carrier offered medical records and the expert testimony of orthopedic surgeon Dr. T. Dr. T testified that he has reviewed Claimant's medical records, the IRO decision and the applicable provisions of the *ODG*, as cited above. Dr. T testified that his review of the records did not reveal any demonstrable signs of an ACL problem and the MRI that was performed on February 6, 2008 did not reveal an ACL tear. Dr. T' testimony was supported by evidence based medicine and outweighs the findings of the IRO. The carrier has shown by a preponderance of evidence based medicine that the requested procedure 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. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.

2. On _____ Claimant was the employee of (Employer).

3. Claimant sustained a compensable injury on _____.

4. The IRO determined that the Claimant should have a right knee arthroscopy with ACL reconstruction for the compensable injury of _____.

5. The Division sent a single document stating the true corporate name of the Carrier/Petitioner and the name and street address of Carrier/Petitioner's registered agent for service with the 10-day letter to the Respondent/Claimant at the Claimant’s address of record. That document was admitted into evidence as Hearing Officer Exhibit Number 2.

6. Claimant failed to appear for the May 28, 2009 medical contested case hearing and did not respond to the Division's letter offering him the opportunity to have the hearing rescheduled.

7. Claimant did not have good cause for failing to appear at the medical contested case hearing.

8. Right knee arthroscopy with ACL reconstruction is not health care reasonably required for the compensable injury of _____.

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 the right knee arthroscopy with ACL reconstruction is health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to the right knee arthroscopy with ACL reconstruction for the compensable injury of _____.

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 **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

CORPORATION SERVICE CO.
701 BRAZOS STREET, STE. 1050
AUSTIN, TX 78701-3232

Signed this 26th day of June, 2009.

Jacquelyn Coleman
Hearing Officer