MEDICAL CONTESTED CASE HEARING NO. 18014

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 April 25, 2018 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to outpatient left knee arthroscopy lateral release and close manipulation of the total knee, for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by DE, ombudsman. Respondent/Carrier appeared and was represented by GP, adjuster.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Carrier: None.

The following exhibits were admitted into evidence:

ALJ's Exhibits ALJ-1.

Claimant's Exhibits C-1 through C-7.

Carrier's Exhibits CR-A through CR-E.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury), when he fell into a valve control box while walking Employer's premise. His medical treatment included a December 14, 2015, total left knee replacement and post-operative physical therapy (PT). Claimant requested approval of an outpatient left knee arthroscopy lateral release and close manipulation of the total

knee. Claimant testified that, after the December 14, 2015, total knee replacement surgery and PT, his knee was painful and stiff. According to Claimant, he must use a cane to perform his job duties, such as walking Employer's premises, and is unable to walk a straight line. The IRO doctor, who is board certified orthopedic surgeon, upheld the previous denials, and Claimant appealed.

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 (22-a) 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 (18-a) 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 is considered a party 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 criteria for lateral retinacular release:

Criteria for lateral retinacular release:

1. Conservative Care: Physical therapy (not required for acute patellar dislocation with associated intra-articular 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 ODG provides the following criteria for manipulation under anesthesia (MUA):

See Surgery for arthrofibrosis.

The ODG provides the following criteria for arthrofibrosis:

***ODG Indications for Surgery*™ -- Surgery for arthrofibrosis:**

Arthrofibrosis treatment should always take a step-wise approach because more than half of patients will respond adequately to prolonged non-surgical measures. The majority of refractory contractures will respond to manipulation under anesthesia (MUA) alone, preferably performed within 3 months following injury/surgery. Repeat knee MUA is not recommended. More invasive surgery (usually arthroscopic adhesiolysis) is only rarely required for persistent severe stiffness, with the addition of percutaneous releases only as needed.

Criteria for manipulation under anesthesia (MUA), requiring ALL of the following:

1. Conservative Care: A minimum of 6 weeks, including
    (1) Physical therapy and exercise AND/OR
    (2) Bracing/casting AND/OR
    (3) Joint injection. PLUS
2. Subjective Clinical Findings: Pain and functional limitations continue despite conservative care. PLUS
3. Objective Clinical Findings: Limited range of motion, including knee flexion <90 degrees AND/OR extension loss >10 degrees. PLUS
4. Absence of Contraindications: No history of
    (1) prior extensor mechanism rupture or unhealed knee fracture. AND/OR
    (2) flexion <40 degrees. AND/OR
    (3) knee range of motion (ROM) <30 degrees. PLUS
5. Time since injury/surgery of 6 months or less

Criteria for arthroscopic adhesiolysis (AA):

1. Meets MUA criteria 1, 2, and 3 above. PLUS
2. Time since injury/surgery of 3 months or more. PLUS
3. Presence of contraindications for MUA: history of
    (1) prior extensor mechanism rupture or unhealed knee fracture. AND/OR
    (2) flexion <40 degrees. AND/OR
    (3) knee ROM <30 degrees. OR
4. Other substantiated indication for arthroscopic knee surgery, including failed MUA.

Criteria for percutaneous releases (with AA):

1. Meets criteria for AA above. PLUS
2. Failure to achieve adequate ROM gains with AA alone. This decision must be determined during AA surgery.

Criteria for open adhesiolysis:

1. Meets AA criteria 1, 2, and 3 above. PLUS
2. Other substantiated indication for open knee surgery (e.g., painful hardware removal, infection, etc.).

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

Risk versus benefit: Manipulation under anesthesia (MUA) following total knee arthroplasty (TKA) has a relatively low risk profile and predictable motion gains, provided that (1) there has not been any compromise to the extensor mechanism or unhealed knee fracture, (2) pre-operative knee flexion exceeds 40 degrees, and (3) knee range of motion exceeds 30 degrees. The benefits of MUA for TKA are well documented up to 6 months, with best results occurring within 3 months. The risk of periprosthetic fracture is low (0.2%). Associated diabetes, flexion <70 degrees, and multiple prior knee surgeries will likely result in more marginal motion improvement. Following anterior cruciate ligament reconstruction (ACLR), MUA has been most beneficial to achieve gains in flexion, whereas other techniques (drop-casting, arthroscopy) have been more effective for blocks to full extension. MUA results can be more disappointing following knee trauma, although arthrofibrosis from combat injuries has fared better with fewer complications using MUA compared to arthroscopic adhesiolysis (AA). When indicated, AA has about a 10% failure rate, and mild regression of initial motion gains can be expected. Percutaneous release, especially “pie-crusting,” appears to be a promising additional adjunct for quadriceps band lengthening when needed. No complications have been reported for this needling technique. Open surgery carries obvious higher surgical risks with an increased potential for scarring.

The IRO doctor thought the ODG guidelines for lateral retinacular release had not been met. On October 20, 2017, orthopedic surgeon, PB, D.O., examined Claimant and recommended a conservative course to treat Claimant's complaints of pain on the medial aspect of his left leg and knee. Dr. B opined that further surgical intervention could cause Claimant to develop further arthrofibrosis, limited range of motion, and pain. Orthopedic surgeons, RW, M.D., GS, D.O., and KA, M.D., reviewed Claimant's medical records and determined that his request for outpatient left knee arthroscopy lateral release and close manipulation of the total knee was not unreasonable. All three doctors referred to Claimant's lack of recent conservative care; his last PT session occurred in 2016. Drs. S and A recommended that Claimant complete conservative care before considering additional surgery. Drs. S and A stated that Claimant did not meet the ODG criteria for lateral retinacular release due to the lack of medical records documenting current subjective complaints of knee pain with sitting, pain with patellar/femoral movement or recurrent dislocations. Dr. W stated that Claimant's left knee had full extension and flexion of 85 degrees. Drs. S and A reported that Claimant's medical records did not include current physical examinations reporting lateral tracking of the patella, recurrent effusion, patellar apprehension, synovitis with or without crepitus, or increased Q angle greater than 15 degrees. Drs. S and A stated that Claimant's records did not include imaging clinical findings of abnormal patellar tilt. Drs. A, S, and W stated that, as more than a six months had passed since Claimant's knee replacement, it was unlikely that the MUA procedure would benefit Claimant.

The credible evidence supported the IRO decision. The IRO doctor is a neutral doctor in this case. Claimant failed to overcome the IRO decision by the preponderance of evidence based medical evidence.

There was no objection to the testimony, reports, or qualifications of any doctor.

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 through Commerce & Industry Insurance Company, Carrier.

    D. On (Date of Injury), Claimant sustained a compensable injury.

E. The IRO determined Claimant should not have outpatient left knee arthroscopy lateral release or close manipulation of the total knee.

2. Carrier delivered to Claimant/Petitioner 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 Administrative Law Judge's Exhibit Number 2.

3. Outpatient left knee arthroscopy lateral release or close manipulation of the total knee are 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 IRO that an outpatient left knee arthroscopy lateral release or close manipulation of the total knee are not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to outpatient left knee arthroscopy lateral release or close manipulation of the total knee 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 **COMMERCE & INDUSTRY INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TEXAS 78701-3218

Signed this 30th day of April, 2018.

Rabiat Ngbwa
Administrative Law Judge