

MEDICAL CONTESTED CASE HEARING NO. 19008

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. For the reasons discussed herein, the Administrative Law Judge (ALJ) determines that:

Claimant is not entitled to the requested left ankle arthroscopy.

ISSUES

A contested case hearing (CCH) was held on June 10, 2019, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to left ankle arthroscopy?

PARTIES PRESENT

Petitioner/Claimant (Claimant) was not present, and DV, an ombudsman appeared to assist, if Claimant appeared. Respondent/Carrier (Carrier) appeared and was represented by BJ, attorney.

EVIDENCE PRESENTED

No witnesses testified at the CCH.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits: ALJ-1 through ALJ-3.

Claimant's Exhibits: None.

Carrier's Exhibits: CR-E.

BACKGROUND INFORMATION

Although properly notified, Claimant failed to appear for the contested case hearing scheduled for 8:30 am on June 10, 2019. A 10-day letter was sent to Claimant on June 12, 2019, advising her that the hearing had convened, that the record was opened and developed, and that the record would be held open for 10 days after receipt of the letter to afford Claimant the opportunity to respond in writing, show good cause for her failure to appear at the June 10, 2019, hearing, and request that the hearing be rescheduled to permit her to present evidence on the disputed issues.

Claimant failed to timely respond in writing to the 10-day letter as required by DWC Rule 142.11(a), and the record was closed on June 27, 2019.

Carrier stipulated that Claimant was the employee of (Employer) and that on (Date of Injury), she sustained a compensable injury. Carrier also stipulated that DB M.D., requested preauthorization for a left ankle arthroscopy and Repair 29898, 29895 and 27658. The repairs requested were found by the IRO to be medically necessary and are not at issue in this CCH. The Texas Department of Insurance appointed Health Decisions Inc. as the Independent Review Organization (IRO). The IRO upheld Carrier's denial of preauthorization for left ankle arthroscopy.

According to the Independent Review Decision, Claimant suffered an injury to her ankle when she was walking down stairs at work. She underwent conservative treatment at (Healthcare Provider). June 9, 2018, X-rays found no acute fractures, the talar dome unremarkable, no foreign bodies were seen, and the soft tissues were intact. There were no radiographically evident acute abnormalities of the ankle. A July 2, 2018, MRI included an indication of peroneal tendinosis, tendon strain and tenosynovitis and mild increased tibiotalar and subtalar joint fluid, suggestive of synovitis. Claimant's physician DB, MD discussed non operative and operative treatment with Claimant on July 31, 2018, and Claimant agreed to proceed with surgery. Her surgery was denied by the Carrier. On September 26, 2018, a URA determination by Dr. GG, MD resulted in a notification of adverse determination for the requested left ankle arthroscopy and repair 29898, 29895 and 27658. On October 12, 2018, a URA-R3-Determination was performed by GP, MD and resulted in a notification of reconsideration adverse determination of the treatment requested. The reconsideration was referred to a Texas Licensed Utilization Review Physician for Coventry Health Care Workers' Compensation, Inc. who was not involved with the original review determination. The review of the reconsideration found that a Texas Licensed Utilization Review Physician has determined that the proposed treatment does not meet medical necessity guidelines. Thereafter the IRO was appointed to review the denial.

Notice of Independent Review Decision by the IRO was sent to all of the parties on November 26, 2018. The reviewing physician was licensed to practice in Texas. The reviewing physician upheld the prior adverse determination of the left ankle arthroscopy. The IRO review found the peroneal tendon repair was approved and the left ankle arthroscopy is denied. The IRO review found that the Official Disability Guidelines (ODG) does not support ankle arthroscopy. The IRO noted that patient has no significant intra-articular pathology identified on the MRI and does not require ankle arthroscopy.

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 ODG Guidelines for Ankle Arthroscopy provides:

An arthroscope is a tool like a camera that allows the physician to see the inside of a joint, and the surgeon is sometimes able to perform surgery through an arthroscope, which makes recovery faster and easier. Having started as a mainly diagnostic tool, ankle arthroscopy has become a reliable procedure for the treatment of various ankle problems. (*Stufkens, 2009*) Ankle arthroscopy provides the surgeon with a minimally invasive treatment option for a wide variety of indications, such as impingement, osteochondral defects, loose bodies, ossicles, synovitis, adhesions, and instability. Posterior ankle pathology can be treated using endoscopic hindfoot portals. It compares favorably to open surgery with regard to less morbidity and a quicker recovery. (*de Leeuw, 2009*)

There exists fair evidence-based literature to support a recommendation for the use of ankle arthroscopy for the treatment of ankle impingement and osteochondral lesions and for ankle arthrodesis. Ankle arthroscopy for ankle instability, septic arthritis, arthrofibrosis, and removal

of loose bodies is supported with only poor-quality evidence. Except for arthrodesis, treatment of ankle arthritis, excluding isolated bony impingement, is not effective and therefore this indication is not recommended. Finally, there is insufficient evidence-based literature to support or refute the benefit of arthroscopy for the treatment of synovitis and fractures. (*Glazebrook, 2009*)

The Claimant, having failed to appear, failed to offer any persuasive evidence-based medical evidence to overcome the decision of the IRO. Based on the evidence presented, Claimant did not meet her burden of proof to overcome the decision of the IRO by a preponderance of evidence-based medical evidence. As a preponderance of the evidence is found not to be contrary to the decision of the IRO that the requested left ankle arthroscopy is not health care reasonably required for the compensable injury of (Date of Injury), Claimant is held not to be entitled to the procedure.

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. Carrier 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 coverage with Texas Mutual Insurance Company, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. DB M.D. requested preauthorization of a left ankle arthroscopy and repair 29898, 29895 and 27658.
 - F. Carrier denied preauthorization for the requested left ankle arthroscopy.
 - G. The Texas Department of Insurance appointed Health Decisions Inc. as the Independent Review Organization.
 - H. The Independent Review Organization upheld Carrier's denial of preauthorization for left ankle arthroscopy.
2. The Division sent a single document stating the true corporate name of the Carrier and the name and street address of Carrier's registered agent for service with the [], letter to the

Claimant at Claimant's address of record. That document was admitted into evidence as Administrative Law Judge Exhibit Number 2.

3. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that Claimant is not entitled to the requested left ankle arthroscopy.
4. Claimant did not appear for the CCH on June 10, 2019.
5. Claimant did not have good cause for failing to appear for the CCH on June 10, 2019.

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. Claimant is not entitled to the requested left ankle arthroscopy.

DECISION

Claimant is not entitled to the requested left ankle arthroscopy.

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

**RICHARD J. GERGASKO
TEXAS MUTUAL INSURANCE COMPANY
2200 ALDRICH STREET
AUSTIN, TEXAS 78723**

Signed this 3rd day of July, 2019.

Christopher M. Maisel
Administrative Law Judge