

MEDICAL CONTESTED CASE HEARING NO. 20011

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 Administrative Law Judge determines that the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to left knee arthroscopy, partial medial meniscectomy for the compensable injury of (Date of Injury).

ISSUE

A contested case hearing was held on July 28, 2020, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to left knee arthroscopy, partial medial meniscectomy for the compensable injury of (Date of Injury)?

PERSONS PRESENT

The medical contested case hearing was held by teleconference due to the COVID-19 pandemic. The Petitioner/Claimant appeared and was assisted by AW, ombudsman. The Respondent/Carrier appeared and was represented by DG, attorney. Also present was the court reporter, AP.

EVIDENCE PRESENTED

Witnesses for Claimant/Petitioner: Claimant

Witnesses for Carrier/Respondent: None

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibit: ALJ-1

Evidence for Claimant/Petitioner: Exhibits CL-1 through CL-10

Evidence for Carrier/Respondent: Exhibits CR-A through CR-N

BACKGROUND INFORMATION

The parties stipulated that Claimant sustained a compensable injury on (Date of Injury). The records reflect that the compensable injury extends to and includes a left knee acute strain of the

medial collateral ligament, a left knee medial meniscus tear of the posterior horn, and a left knee sprain.

On September 14, 2018, Claimant's physician, MP, M.D., performed surgery for a left knee medial meniscus tear. Claimant had recurrent pain and an MRI showed a meniscal fragment extending into the inferior medial gutter with concern for a new flap tear in the body of the medial meniscus. Dr. P recommended a second left knee arthroscopy, partial medial meniscectomy. Preauthorization from the Carrier's utilization review agent was requested and denied. An Independent Review Organization (IRO) assessment was requested. Envoy Medical Systems, LP was appointed to act as IRO by the Texas Department of Insurance. A board-certified orthopedic surgeon was the reviewer through Envoy Medical Systems, LP. In a decision notice dated April 1, 2019, the reviewer upheld the Carrier's denial of the requested surgery as medically unnecessary, noting a second left knee arthroscopy would unlikely improve the Claimant's pain.

DISCUSSION

Texas Labor Code § 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 § 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 § 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 in accordance with Texas Labor Code § 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 § 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by 28 Texas Administrative Code § 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 28 TAC § 133.308(s), "A

decision issued by an IRO is not considered an agency decision and neither the department nor the division is considered parties to an appeal. In a division 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."

On the date of this medical contested case hearing, the ODG provides the following guidance with regard to the requested procedure:

Meniscectomy – recommended as indicated below for symptomatic meniscal tears in your patients, primarily for traumatic tears. Not recommended for osteoarthritis (OA) in the absence of solid mechanical meniscal findings or in older patients with degenerative tears who are more appropriately treated with physical therapy/exercise. (*Kirkley, 2008*) (*Khan, 2014*).

ODG Indications for Surgery – Meniscectomy – Criteria for meniscectomy or meniscus repair (It is recommended to require 2 symptoms and 2 signs to avoid arthroscopy with lower yield, e.g., pain without other symptoms, posterior joint line tenderness that could signify arthritis, or MRI with degenerative tear, which is often a false positive). Physiologically younger and more active patients with traumatic injuries and mechanically symptoms (locking, catching, etc.) should undergo arthroscopy without PT.

At the Contested Case Hearing, Claimant did not provide evidence-based medicine in support of his requested left knee arthroscopy with partial meniscectomy. Claimant testified that he continued to be in pain and required the surgery. He stated that he would not be returning to Dr. P to perform the surgery and had consulted with another physician concerning surgery. Based on the evidence presented and considered, Claimant failed to prove that he met the requirements in the ODG for the requested procedure, and he failed to provide an evidence-based medical opinion sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to left knee arthroscopy with partial meniscectomy for the compensable injury of (Date of Injury).

The Administrative Law Judge considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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 employed by (Employer).
- C. On (Date of Injury), Employer provided workers' compensation coverage with Standard Fire Insurance Company.
- 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 Carrier's Exhibit N.
 3. The compensable injury extends to and includes a left knee acute strain of the medial collateral ligament, left knee medical meniscus tear of the posterior horn, and a left knee sprain.
 4. Envoy Medical Systems, LP was appointed to act as Independent Review Organization by the Texas Department of Insurance.
 5. The IRO determined that the Claimant was not entitled to left knee arthroscopy, partial medial meniscectomy.
 6. Claimant failed to provide sufficient evidence-based medical evidence in support of the necessity for the procedure.

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 Independent Review Organization (IRO) that the Claimant is not entitled to left knee arthroscopy, partial medial meniscectomy for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to left knee arthroscopy, partial medial meniscectomy for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code § 408.021.

The true corporate name of the insurance carrier is **STANDARD FIRE 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**

Signed this 4th day of August, 2020

Alice Orta
Administrative Law Judge