

MEDICAL CONTESTED CASE HEARING 21011

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

Claimant is not entitled to total left knee arthroplasty, uncemented, for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on August 10, 2021, to decide the following disputed issue:

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

PERSONS PRESENT

Claimant appeared and was assisted by MM, ombudsman. Insurance Carrier appeared and was represented by BJ, attorney. Also present was Claimant's spouse, (spouse), and TB, observing at Claimant's request.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: BS, M.D.

The following exhibits were admitted into evidence:

ALJ's Exhibit: ALJ-1.

Claimant's Exhibits: C-1 through C-7. (224 PDF pages)

Insurance Carrier's Exhibits: CR-A through CR-I. (135 PDF pages)

The parties affirmed on the record that, despite any possible misnumbering or mislabeling of their respective exhibits, the PDF pages noted next to the exhibits admitted is correct.

DISCUSSION

Claimant is a (age)-year-old electrical service power lineman for Employer. On (Date of Injury), he was working on a power pole using a climbing harness when the wood on a portion of the pole gave way causing him to lose footing on the right foot causing him to drop down with his left leg extended upwards between his body and the pole. This caused injuries to his left knee, and Insurance Carrier has accepted as compensable a left knee anterior cruciate ligament (ACL) tear, and unilateral osteoarthritis of the left knee. Claimant had surgery on July 24, 2015, and September 11, 2015, to address these problems, and extensive physical therapy thereafter. He returned to work in August 2016, but has continued to have left knee problems.

Claimant is being treated by MB, M.D., an orthopedic surgeon, who has proposed the surgery at issue in this case. Dr. B wrote a summary of Claimant's treatment to date on July 21, 2021, (Claimant's Exhibit C-3) indicating that Claimant has complete joint space collapse of multiple compartments of the left knee, which he termed severe, post traumatic joint disease, with pain and limitation of motion. He noted that Claimant had failed conservative management and that Claimant now needs a total left knee replacement arthroplasty.

On July 9, 2021, Claimant had a consultation for a second opinion with BW, M.D., an orthopedic surgeon, who concurred that conservative measures have been exhausted and that Claimant is now a candidate for left total knee replacement arthroplasty.

The Insurance Carrier has accepted as compensable in this case an injury in the form of left knee ACL tear and unilateral osteoarthritis of the left knee. There is no issue of relatedness of the requested treatment to the compensable injury in this case. The only issue is reasonableness and necessity of the proposed treatment.

In accordance with statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by DWC 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 DWC 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, 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 March 12, 2021, a review of the request for total left knee arthroplasty was performed by JR, M.D., an orthopedic surgeon, serving as Insurance Carrier's utilization reviewer. The treatment requested was non-certified on the grounds that ODG guidelines were not met. The rationale was absence of quantifiable findings for range of motion, no active lists of current medications, and

no baseline body mass index documented. An appeal was reviewed for Insurance Carrier by GP, M.D., an orthopedic surgeon on April 8, 2021, who upheld the non-certification, noting that ODG guidelines were not met with regard to documentation of baseline body mass index, palpable marginal osteophytes, no documentation of nighttime joint stiffness and pain, and Claimant's age which was less than 50. Both Dr. R and Dr. P made multiple attempts to contact Dr. B for peer-to-peer consultation without success.

Claimant appealed the non-certification of the requested surgery to an IRO, which had the request reviewed by a medical doctor who is board certified in orthopedic surgery on May 30, 2021. He upheld non-certification of the requested procedure citing the ODG, noting that Claimant had undergone a steroid injection to the knee less than 6 months before the proposed procedure, no documentation of significant weight loss for a patient with body mass index over 35, Claimant's age was less than 50, no documentation of recent failed conservative treatments, absence of radiology reports, and no extenuating circumstances noted to support the requested procedure as an exception to the guidelines. At the hearing, BS, M.D., an orthopedic surgeon, testified that the requirements of the ODG for the requested treatment are not met in the particulars noted by the IRO examiner.

The preponderance of the evidence supports the decision of the IRO. Claimant did not carry his burden to prove through evidence-based medical evidence that the decision of the IRO should be overturned.

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 the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation coverage through Texas Mutual Insurance Company, Insurance Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury), in the form of at least the Insurance Carrier-accepted conditions of left knee ACL tear and unilateral osteoarthritis of the left knee.

- E. There are no other conditions or diagnoses that need to be adjudicated in this case for purposes of determining the reasonableness and necessity of the requested medical treatment.
 - F. The IRO, in Case No. 312470, on May 30, 2021, determined that total left knee arthroplasty, uncemented, is not medically reasonable or necessary treatment for the injury of (Date of Injury).
2. Insurance Carrier delivered to Claimant a single document stating the true corporate name of Insurance Carrier, and the name and street address of Insurance Carrier's registered agent, which document was admitted into evidence as Insurance Carrier's Exhibit CR-B.
 3. Evidence-based medical evidence does not establish that total left knee arthroplasty, uncemented, is healthcare reasonably required for the compensable injury of (Date of Injury).
 4. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to total left knee arthroplasty, uncemented, 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 total left knee arthroplasty, uncemented, is not healthcare reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to total left knee arthroplasty, uncemented, for the compensable injury of (Date of Injury).

ORDER

Insurance 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 §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 20th day of August, 2021.

Warren E. Hancock, Jr.
Administrative Law Judge