

## **MEDICAL CONTESTED CASE HEARING NO 22012**

### **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) determined that the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that Claimant/Petitioner is not entitled to arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace for the compensable injury of (Date of Injury).

### **STATEMENT OF THE CASE**

On September 7, 2022, Kevin L. Henry, a DWC ALJ, held a contested case hearing with the record closing on October 7, 2022, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant/Petitioner is not entitled to arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace for the compensable injury of (Date of Injury)?

### **PARTIES PRESENT**

Although properly notified of the time, date, and place of the hearing, Claimant/Petitioner did not appear. Insurance Carrier/Respondent appeared and was represented by CF, attorney.

### **EVIDENCE PRESENTED**

No witnesses testified.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1 and ALJ-2.

Claimant/Petitioner's Exhibits: None.

Insurance Carrier/Respondent's Exhibits: CR-A through CR-I.

## DISCUSSION

Although properly notified, Claimant/Petitioner failed to appear for the CCH scheduled for 2:00 p.m. on September 7, 2022. A 10-day letter was sent to Claimant/Petitioner as required by DWC Rule 142.11(a), advising him that the CCH 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/Petitioner the opportunity to respond in writing and show good cause for his failure to appear at the September 7, 2022, CCH. (ALJ-2). Claimant/Petitioner failed to respond in writing to the 10-day letter, and the record was closed on October 7, 2022.

Insurance Carrier/Respondent affirmed and stipulated that Claimant/Petitioner sustained a compensable injury on (Date of Injury).

A request for preauthorization of arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace for the compensable injury of (Date of Injury), was submitted to Insurance Carrier/Respondent. The request was denied.

Claimant/Petitioner appealed the denial. The subsequent utilization review agent again recommended that the requested arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace be denied. Claimant/Petitioner appealed Insurance Carrier/Respondent's denial through the DWC IRO process. Independent Reviewers of Texas, the IRO, upheld the Insurance Carrier/Respondent's denial. Claimant/Petitioner appealed the IRO decision to a contested case hearing in accordance with 28 Texas Labor Code §133.308.

Claimant/Petitioner offered no credible or persuasive evidence that the decision of the IRO was incorrect. Also, Insurance Carrier/Respondent submitted the report of JH, D.C., the designated doctor in this case. Dr. H examined Claimant/Petitioner and his medical records. The designated doctor opined, based upon that examination, that the left knee meniscal tear and meniscal root tear were not part of the compensable injury for Claimant/Petitioner.

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 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 DWC 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 §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 DWC has adopted treatment guidelines by 28 Texas Administrative Code (TAC) §137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the 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 Texas Department of Insurance nor DWC 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.

For Claimant/Petitioner to meet his burden, he had to present a qualified expert medical opinion with reference to evidence-based medicine to show the preponderance of the evidence-based medical evidence is contrary to the decision issued by the IRO. Such evidence-based medical evidence was lacking in this case. As such, insufficient evidence-based medical evidence existed to explain that the requested arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace were health care reasonably required for the compensable injury. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to the requested treatment.

The ALJ 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. Insurance Carrier/Respondent stipulated to the following facts:
  - A. The Texas Department of Insurance, DWC has jurisdiction to hear this matter.
  - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, DWC.
  - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - D. On (Date of Injury), Employer provided workers' compensation insurance coverage through American Zurich Insurance Company, Insurance Carrier.
  - E. On (Date of Injury), Claimant/Petitioner sustained a compensable injury.
  - F. The Independent Review Organization determined Claimant is not entitled to left knee arthroscopic meniscus repair and a prefabricated hinged knee brace, post-operative.
2. DWC sent a single document stating the true corporate name of Insurance Carrier/Respondent and the name and street address of Insurance Carrier/Respondent's registered agent for service with the show cause letter to Claimant/Petitioner at his address of record on September 7, 2022. This document was admitted into evidence.
3. Claimant failed to appear for the September 7, 2022, CCH and did not respond in writing to DWC's show cause letter.
4. Claimant did not have good cause for failing to appear at the September 7, 2022, CCH.
5. The arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace is not health care reasonably required for the compensable injury of (Date of Injury).

## CONCLUSIONS OF LAW

1. The Texas Department of Insurance, DWC, 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 Claimant/Petitioner is not entitled to arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace for the compensable injury of (Date of Injury).

## DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to arthroscopy, left knee meniscus repair, and a fabricated hinged knee brace for the compensable injury of (Date of Injury).

## ORDER

Insurance Carrier/Respondent is not liable for the benefits at issue in this hearing. Claimant/Petitioner 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 **AMERICAN ZURICH 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 11th day of October 2022.

Kevin L. Henry  
Administrative Law Judge