

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.

ISSUE

A benefit contested case hearing was held on April 7, 2008, to decide the following disputed issue:

Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that lumbar MRI without contrast is not a reasonable and necessary health care services for the compensable injury of ___?

PERSONS PRESENT

Claimant appeared and was assisted by an (Ombudsman). Carrier appeared and was represented by an (Attorney). The court reporter was DH.

BACKGROUND INFORMATION

On ___, Claimant sustained a low back and left trapezius injury while lifting during the course and scope of her employment as a flight paramedic. She testified that as part of her job she routinely had to help lift a NICU isolet into a helicopter, and that is what she was doing when she was injured.

Claimant received conservative treatment, including medication, exercise, physical therapy, traction, TENs unit and injections, with minimal improvement. An MRI performed on January 20, 2005, was interpreted as normal and revealed high signal within the disc spaces at each level and no evidence of disc protrusion, canal stenosis or foraminal encroachment at any level.

Claimant was referred to Dr S in February of 2006. He diagnosed low back pain and lumbar radiculopathy and noted bilateral lower extremity pain, with the left being worse than the right. His reports revealed no evidence of numbness or weakness in the bilateral lower extremities until February of 2008, when he noted complaints of numbness and weakness in the left lower extremity.

Dr S ordered a repeat MRI in November of 2007, which was denied by the carrier.

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. **Section 401.011(22-a)** defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by **Section 401.011(18-a)** as 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 in making decisions about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*.

Preauthorization denials cited the ODG for the proposition that a repeat MRI was not warranted absent any significant neurological change in Claimant's condition.

The IRO reviewer, a pain management doctor, upheld the denial and opined that the lumbar MRI without contrast was not medically necessary citing the previous normal MRI and the fact that Claimant's last examination was nonfocal with no neurological deficits. He cited the ODG provision, which states that repeat MRI's are indicated only if there has been a progression of neurologic deficit.

Dr S, in his initial request for the repeat MRI, opined that Claimant suffers from low back pain and cluneal neuralgia; that her back exam does not point to any one specific pain generator; that her pain has not resolved with rest or medication; and, that he wanted the repeat MRI to rule out any new pathology in her spine. Dr S did not provide a report addressing the *ODG* criteria and explaining how or why Claimant meets the criteria for a repeat MRI.

As noted previously herein, "health care reasonably required" means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert's bald assurance of validity is not enough. See *Black v. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). When determining reliability, the hearing officer must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990).

In the instant case, the claimant failed to meet her burden of proof. While the claimant presented evidence and the opinion of her treating doctor, the claimant failed to present evidence-based

medical evidence as to the appropriateness of the proposed procedure, she failed to establish that no such evidence-based medical evidence is available, and she failed to present evidence that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. Dr S's reports, without reference to the *ODG* or other evidence-based medicine justifying departure from the *ODG*, does not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested repeat MRI without contrast for this injured worker does not meet the criteria set out in the *ODG*.

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 ____, Claimant was the employee of (Employer) when she sustained a compensable injury.
 - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of ____
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The treating doctor requested a lumbar MRI without contrast.
4. Claimant had a normal lumbar MRI on January 20, 2005.
5. The requested service is not consistent with the *ODG* criteria for a repeat lumbar MRI.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that a lumbar MRI without contrast is not a reasonable and necessary health care service for the compensable injury of ____.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that a lumbar MRI without contrast is not a reasonable and necessary health care service for the compensable injury of ____.

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 Section 408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Signed this 14th day of April, 2008.

Erika Copeland
Hearing Officer