

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 opened on May 27, 2008, and closed on July 15, 2008, to decide the following disputed issue:

Whether an EMG/ nerve conduction velocity study to include CPT codes 95861, 95900, and 95904 is reasonable and necessary health care service for the compensable injury of _____.

PARTIES PRESENT

Petitioner appeared and was assisted by IG, Ombudsman. Carrier appeared and was represented by JF, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her lumbar spine on _____ while working at a wholesale nursery. During the first month after the injury, the Claimant received conservative care from both her chiropractor and physical medicine specialists. She also received physical therapy. The Claimant's physicians, including Drs. L and Lo, believed that the Claimant's symptoms were consistent with a strain injury. Claimant was referred for trigger point injections, but received no relief from them.

An MRI performed on October 21, 2006 found no significant disc herniation or protrusion except for a small area of herniation at L5,S1, normal vertebral bodies, and some disc degeneration in the lower thoracic spine at the T 8-9, T 9-10 and T10-11. The MRI further diagnosed a compression fracture at T-9 of unknown duration, with no evidence of compression of the spinal cord or nerve root compression. Radicular pain was first mentioned on January 12, 2007. An EMG of the right leg and paraspinous was performed on April 17, 2007. The results were normal. Claimant's physicians requested a repeat EMG, but this was denied by the Carrier and also WB, M.D., a peer review doctor.

A review by an Independent Review Organization (IRO) upheld the Carrier's denial of the repeat EMG. The IRO cites the prior EMG which was normal, normal neurological examinations, no motor reflex or sensory loss, and the lack of documented progressive neurological deficits as reasons for the denial. In addition, the IRO utilized the Official Disability Guidelines (ODG) in reaching its conclusion.

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 qualified 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 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 Official Disability Guidelines (ODG).

Although Claimant's physicians, BDN and DBE provided letters of support for the proposed EMG, neither physician gave specific reasons why this EMG was necessary, nor did they reference evidence-based medicine in support of the Claimant's position. Health care reasonably required under the Texas Workers' Compensation Act must be evaluated based on evidence based medicine, or in its absence, based upon the generally accepted standards of medical practice recognized in the medical community. In this case, the IRO decision evaluated the health care request in view of evidence based medicine. The preponderance of the evidence is not contrary to the IRO decision.

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.
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 Hearing Officer's Exhibit Number 2.
3. Dr. E recommended an EMG/ nerve conduction velocity study to include CPT codes 95861, 95900, and 95904, to determine if there was electrophysiologic evidence of underlying lumbosacral radiculopathy.

4. The preponderance of the evidence is not contrary to the IRO that an EMG to include CPT codes 97861, 95900, and 95904 is not a reasonable and necessary health care service for the compensable injury of _____.

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. An EMG to include CPT codes 97861, 95900, and 95904 is not 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 an EMG to include CPT codes 97861, 95900, and 95904 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 §408.021.

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

**NATIONAL REGISTERED AGENTS, INC.
1614 SIDNEY BAKER STREET
KERRVILLE, TEXAS 78028-2640**

Signed this 21st day of July, 2008.

Carolyn Cheu
Hearing Officer