

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

Is the preponderance of the evidence contrary to the Independent Review Organization (IRO) decision that cervical discography with post CT scan at spinal level C4-C7 is not a reasonable and necessary health care service for the _____compensable injury?

PARTIES PRESENT

Claimant was present at the hearing without legal representation. Mr. AW, ombudsman, was present to assist Claimant in the hearing. Mr. RJ, attorney at law, represented Carrier.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____while employed by (Employer). Claimant testified that she slipped on an oil spill causing her to injure both feet, her neck, and left upper extremity.

Regarding Claimant's cervical injury, Dr. JK, Claimant's treating doctor, recommended a cervical discogram with post CT scan of spinal levels C4-C7. Carrier denied the requested diagnostic studies, and Claimant subsequently requested a review by an IRO regarding the appropriateness of the recommended discography. The IRO upheld Carrier's previous adverse determination.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonable 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 *ODG*.

As is noted in the IRO decision, the applicable provisions of the *ODG* provide:

Discography. Not recommended. Conflicting evidence exists in this area, though some recent studies condemn its use as a preoperative indication for IDET or Fusion, and indicate that discography may produce symptoms in control groups more than a year later, especially in those with emotional and chronic pain problems. . . . Cervical discography has been used to assist in determining the specific level or levels causing the neck pain and, has also been debated and more research is needed. (Wieser, 2007). Assessment tools such as discography lack validity and utility. (Haldemann).

The *ODG* also prescribes select criteria all of which must be met if discography is to be performed. That criteria consist of the following.

- (1) Neck pain of 3 or more months.
- (2) Satisfactory results from psychosocial assessment (discography in subjects with emotional & chronic pain has been associated with reports of significant prolonged back pain after injection, and thus should be avoided).
- (3) Should be considered a candidate for surgery.
- (4) Should be briefed on potential risks and benefits both from discography and from surgery.

In a Case Report prepared for Carrier regarding the requested discography, Dr. JW, an orthopedist, noted Claimant met certain criteria mandated by the *ODG*, specifically neck pain for 3 or more months or more and possible surgical candidate. Except for the procedure for the subject implantable drug delivery system, no surgery has been identified. Also at the time of Dr. W's assessment, Claimant had not yet submitted to a psychosocial evaluation. Since then, however, the psychosocial assessment has been conducted and the report of Dr. GG, the psychologist who performed the assessment, was provided to the IRO for its review and consideration. The IRO accurately notes in its report that there are inconsistencies regarding Claimant's psychological complaints. The IRO has opined that Claimant has a history of positive Waddell's signs which could indicate symptom magnification or malingering. The IRO has ultimately opined that Claimant has not met all of the criteria for discography as set forth in the *ODG*. According to the IRO, Claimant would not be a good candidate for discography.

Claimant failed to meet her burden of proof in this case. The IRO determination is consistent with the *ODG*. Claimant has failed to present evidence-based medical evidence to the contrary. Thus, 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 an employee of (Employer).
 - C. On _____, the employer had workers' compensation insurance coverage with Liberty Insurance Corporation.
 - D. On _____, 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 Hearing Officer's Exhibit Number 2.
 3. On June 25, 2007 and August 10, 2007, Dr. JK, Claimant's treating doctor, requested pre-authorization for cervical discogram with post-CT scan at spinal levels C4-C7.
 4. The pre-authorization request was denied by Carrier.
 5. Claimant appealed the non-authorization determination; and an independent review was performed by an IRO, (Company).
 6. The IRO upheld the previous adverse determination to deny (non-certify) the request for cervical discography with post-CT scan at spinal levels C4-C7.
 7. Claimant failed to establish through evidence-based medicine that the requested cervical discography at C4-C7 with post-CT scan is a reasonable and necessary health care service for the _____ compensable injury or that the preponderance of the evidence is contrary to the IRO decision.

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 IRO decision that cervical discography with post CT scan at spinal level C4-C7 is not a reasonable and necessary health care service for the _____ compensable injury.

DECISION

The preponderance of the evidence is not contrary to the IRO decision that cervical discography with post CT scan at spinal level C4-C7 is not a reasonable and necessary health care service for the _____ compensable injury.

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 **LIBERTY INSURANCE CORPORATION**; and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 17th day of July, 2008,

Sandra Weber Fullerton
Hearing Officer