MEDICAL CONTESTED CASE HEARING NO. 08107

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.

ISSUES

A contested case hearing was held on July 28, 2008, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to needle electromyography of one extremity with or without related paraspinals for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MF, ombudsman. Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable right shoulder injury while working for (Employer) on _____. He initially went to a chiropractor, then began receiving care from Dr. S, who sent him to Dr. H for an orthopedic referral. Dr. H diagnosed bursitis of the right shoulder, a sprain/strain of the "Super Glenoid Labrum Lsn (SLAP)", and possible cubital tunnel syndrome. In his chart note of February 12, 2008, Dr. H recommended a nerve study to confirm the cubital tunnel diagnosis. Claimant testified that Dr. H told him he needed tests to confirm the cubital tunnel syndrome before operating on the right shoulder. Dr. H recommended doing surgery for the shoulder and the cubital tunnel syndrome, if needed, at the same time to avoid additional complications from two surgeries rather than one.

Dr. H requested an electromyography and nerve conduction velocity study (EMG/NCV) on February 18, 2008. Carrier denied the requested tests as not being medically necessary because there was no documentation of sensory deficits and the injury was only 1-2 months old without conservative care with splinting. The denial was appealed and was reviewed by Dr. G with Medical Review Institute of America. On March 10, 2008, the requested EMG/NCV was again denied. In his report, Dr. G stated that the requested tests were not medically necessary. He based that opinion on the lack of a comprehensive history of conservative treatment and the lack of objective evidence of cubital tunnel syndrome. Claimant appealed the second denial to the Texas Department of Insurance and the Department appointed Applied Resolutions LLS as the independent review organization (IRO). The IRO assigned the case to a board certified orthopedic MD.

On April 28, 2008, the IRO issued its opinion concurring with Carrier's denial of the EMG/NCV. In reaching his decision, the IRO physician reviewer examined the adverse determination letters from Carrier, the ODG Guidelines and Treatment Guidelines, Dr. H office notes from February 12, 2008, external review notes, the pre-authorization request, a referral for rehabilitation

services, and the physical therapy plan of care and therapy notes. In his report, the IRO physician reviewer noted that Claimant had complaints of parasthesias in his right hand in the ulnar distribution, but the physical examination was negative for sensory deficit in the ulnar distribution. He concluded his report by stating:

> The numbness was found in the C7 dermatome, which is well known typically to give sensation to the long finger of the hand. The ulnar nerve distribution is that of the fifth finger and typically half or more of the ring finger. This is also typically the C8 dermatomal distribution, which was said on clinical examination to be normal. Furthermore, ODG guidelines do not support the use of the EMG/Nerve Conduction Study for sensory deficit which is not compatible with the diagnosis and for which conservative care and splinting have not been performed.

Carrier argues that the EMG/NCV was unnecessary in light of Claimant's upcoming shoulder surgery and the potential that it would resolve the complaints of parasthesias in the right hand. While that argument may or may not be well taken, the Official Disability Guidelines (ODG) provides the following guidance on cubital tunnel syndrome testing:

Tests for cubital tunnel syndrome (ulnar nerve entrapment)	Under study. One test for cubital tunnel syndrome, ulnar motor nerve conduction velocity at the elbow, is reported to have high specificity and low sensitivity. Insufficient data exists to allow firm evidence-based conclusions regarding the effectiveness of any tests for cubital tunnel syndrome, as the evidence base is small and heterogeneous. Diagnosis may be made by symptoms. The elbow is the most common site of compression of the ulnar nerve. Cubital tunnel syndrome is the second most common compressive neuropathy (after carpal tunnel syndrome). Cubital tunnel syndrome affects men 3-8 times as often as women. Affected patients often experience numbness and tingling along the little finger and the ulnar half of the ring finger. This discomfort often is accompanied by weakness of grip. An electromyography (EMG) is not essential when the diagnosis of cubital tunnel syndrome is obvious on clinical examination, as a false test result can be misleading. (AHRQ, 2002) (Lo, 2005) (Robertson, 2005) See also Surgery for cubital tunnel syndrome. The incidence of ulnar nerve entrapment at the elbow (overall 0.8%) is associated with one job related risk factor (holding a tool in position, repetitively, with an odds ratio of 4.1), plus obesity (4.3) and other upper-limb work-related musculoskeletal disorders, especially medial epicondylitis and other nerve entrapment disorders (cervicobrachial neuralgia and carpal and radial tunnel syndromes). (Descatha, 2004) Cubital tunnel syndrome (entrapment of the ulnar nerve at the elbow) is the second most common peripheral nerve entrapment syndrome in the human body, after carpal tunnel syndrome. Patients who are affected with cubital tunnel syndrome often experience numbness and tingling along the little finger and ulnar half of the ring finger, usually accompanied by weakness of grip. This frequently occurs when the patient rests upon or flexes the elbow. When appropriately diagnosed, this condition may be treated by both conservative and operative means. (Cutts, 2007)

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 (Texas Labor Code §408.021). "Health care reasonably required" is defined 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, generally accepted standards of medical practice recognized in the medical community (Texas Labor Code §401.011(22-a)). "Evidence based medicine" means 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 (Texas Labor Code §401.011 (18-a)). In accordance with the above statutory guidance, Rule 137.100 directs health care providers to provide treatment in accordance with the current edition of the ODG, and such treatment is presumed to be reasonably required.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See* Black vs. 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). Evidence is considered 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; 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). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. Black v. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999).

Neither Dr. H nor Dr. S testified. The only evidence provided in support of the request to perform the EMG/NCV testing came in the form of a July 16, 2008, letter from Dr. S that stated that the EMG/NCV had been "requested appropriately" and was "needed prior to surgical correction." While the foregoing may represent the sincere belief of the doctor, it provides no indication of the basis of the opinion nor does it support the need for the test with any scientific and medical evidence formulated from credible scientific studies, peer-reviewed medical literature, or other current, scientifically based texts and treatment and practice guidelines.

In light of the language found in the ODG, it could be considered that there is insufficient evidence based medical information to either support or undermine the use of an EMG/NCV test to confirm or refute a cubital tunnel syndrome diagnosis. As noted above, if evidence based medicine is not available, the propriety of a procedure may be shown by evidence of generally accepted standards of medical practice recognized in the medical community. There was insufficient evidence offered at the hearing to establish those generally accepted standards. Under the circumstances presented, Claimant has failed to provide more than a scintilla of evidence contrary to the opinion of the IRO and the presumptive weight of the IRO decision has not been overcome.

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) and sustained a compensable injury.

   C. The Texas Department of Insurance appointed (Independent Review Organization) as the independent review organization (IRO).

   D. The IRO determined that the requested needle electromyography was not medically necessary health care.

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 1.

3. Claimant was referred to Dr. H for an orthopedic referral in the course of treatment of the pain in his right shoulder.

4. Dr. H believes that Claimant may have cubital tunnel syndrome and recommended that Claimant undergo an EMG/NCV to confirm that diagnosis before any surgery to the right shoulder in order to determine whether a cubital nerve transposition should be performed at the same time.
5. Under the ODG, an EMG/NCV test is not currently recommended because there is insufficient data to allow firm evidence-based conclusions regarding the effectiveness of any tests for cubital tunnel syndrome.

6. Claimant failed to offer evidence showing generally accepted standards of medical practice recognized in the medical community regarding the use of EMG/NCV testing to diagnose the existence of cubital tunnel syndrome.

7. The IRO decision is entitled to presumptive weight.

8. A needle electromyography of one extremity with or without related paraspinals is not reasonably required medical treatment 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. The preponderance of the evidence is not contrary to the decision of IRO that Claimant is not entitled to a needle electromyography of one extremity with or without related paraspinals for the compensable injury of _____.

DECISION

Claimant is not entitled to a needle electromyography of one extremity with or without related paraspinals 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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 N. ST. PAUL STREET
DALLAS, TX 75201.

Signed this 30th day of July, 2008.

KENNETH A. HUCHTON
Hearing Officer