

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 contested case hearing was held on September 26, 2008, to decide the following disputed issue:

1. Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that Electrodiagnostic Testing is not reasonable and necessary health care services for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by JB-T, ombudsman. Carrier appeared and was represented by TW, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury in a motor vehicle accident. Claimant sustained injuries to his neck, back and right femur. Claimant previously had an EMG on August 16, 2006. The current treating doctor recommends a new study pursuant to a diagnosis of right femoral compression, but the IRO upheld the previous adverse determination.

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 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 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.

The ODG provides with regard to the Low Back, under EMG's (electromyography), as follows:

"Recommended as an option (needle, not surface). EMGs (electromyography) may be useful to obtain unequivocal evidence of radiculopathy, after 1-month conservative therapy, but EMG's are not necessary if radiculopathy is already clinically obvious."

The ODG does not provide guidelines for treatment of femoral compression.

After confirming with the IRO that Claimant's peripheral polyneuropathy was not related to diabetes, the IRO reiterated that Claimant's "peripheral polyneuropathy has nothing to do with the injury in question." Although the IRO erroneously concluded that there had been two previous electrodiagnostic studies when there had actually only been one, the basis for the IRO's reasoning is sound when it states, "In as much as the MRI scan showed no compression of any of the neurological structures, there is no indication that a compressive radiculopathy might be expected on electrodiagnostic testing today when it was not present on the two [sic] previous studies." The reviewer also noted that the decision was based not only upon the ODG, but also upon "medical judgement, clinical experience and expertise in accordance with accepted medical standards."

Claimant failed to offer evidence based medicine to contradict the findings of the IRO. Therefore, he is not entitled to the Electrodiagnostic testing which he requested.

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 he 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. Claimant failed to provide evidence based medicine which was contrary to the IRO's determination that Electrodiagnostic testing is not reasonable and necessary health care services 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 the IRO that Electrodiagnostic testing is not reasonable and necessary health care services for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that Electrodiagnostic testing is not reasonable and necessary health care services 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 3rd day of October, 2008.

Charles T. Cole
Hearing Officer