

**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 February 18, 2009 to decide the following disputed issues:

1. Did the claimant timely appeal the decision of the Independent Review Organization (IRO)?; and
2. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a lumbar myelogram with post-myelogram CT scan for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by LL, ombudsman.

Respondent/Carrier appeared and was represented by SB, attorney.

**BACKGROUND INFORMATION**

The evidence presented in the hearing revealed that the claimant sustained a compensable injury to his lumbar spine on \_\_\_\_\_. On March 7, 2007, the claimant underwent a 2-level instrumented spinal fusion at L3-L5 that was performed by Dr. L, M.D. In addition to the fusion, the claimant has received the following treatment for the compensable injury: physical therapy, work hardening, a transcutaneous electrical nerve stimulation (TENS) unit, prescription medication, and epidural steroid injections (ESIs). The claimant testified that he has suffered increased pain in his low back since the March 2007 surgical procedure with no relief from other treatment. He described the pain as sharp and, at times, stabbing as it goes into his legs.

In notes from a follow-up visit with the claimant on February 26, 2008, Dr. L wrote that,

“Sensory exam is normal. His MRI of his lumbar spine shows postoperative changes with good screw and rod placement and interbody device placement. There is no significant disc herniation or significant nerve compression.”

In reviewing X-rays of the lumbosacral spine dated May 29, 2008, Dr. L opined that,

“There is excellent screw and rod placement from L3 to L5. There is an interbody device in excellent position at L4-5. The lateral mass bone growth appears to be maturing. There is no evidence of screw loosening.”

In a record from a follow-up visit with the claimant on the same day as the X-rays, Dr. L stated that the claimant's sensory exam was normal, though he did note pain complaints from the claimant. A fair reading of Dr. L's May 29, 2008 follow-up report indicates that he believed the pain was largely "muscular", but that he was trying to "reassure" the claimant by obtaining a lumbar myelogram with post-myelogram CT (computed tomography) scan. According to the claimant's testimony, Dr. L wanted the procedure to see if scar tissue was possibly pinching a nerve and that Dr. L did not believe that this possible pain generator would be picked up on an MRI.

After Dr. L requested pre-authorization for the proposed lumbar myelogram with post-myelogram CT scan procedure, two utilization reviews were conducted. The first, dated June 6, 2008, was performed by Dr. B, M.D., a neurosurgeon, who opined that the proposed procedure was not medically necessary. Dr. B wrote that,

"The plain films show a good fusion and the neurological examination is normal. There does not appear to be a clear clinical indication for this testing."

Dr. B further opined that an EMG of the lower extremities might be useful. On June 23, 2008, an EMG/NCV was performed by Dr. F, M.D. and, according to a June 24, 2008 note by Dr. L, the EMG showed no "electro diagnostic evidence of acute lumbosacral radiculopathy." Dr. F's records in evidence contained diagnoses of lumbar radiculopathy, though it does not appear that these diagnoses were based on any objective testing.

The second utilization review was conducted on July 3, 2008 by Dr. JMB, M.D., who, like Dr. B, is a neurosurgeon. In his rationale for denying the request for the proposed procedure, Dr. JMB stated that the myelogram was not necessary "as the patient is neurologically normal and the EMG is normal." Following Dr. JMB's denial, a request for review by an IRO was made. The IRO reviewer, an orthopedic surgeon, upheld the denial of the lumbar myelogram with post myelogram CT scan.

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.

Drs. B and JMB each referenced the ODG in their opinions denying the medical necessity of the proposed procedure. With regard to CT & CT Myelography, the ODG provides,

“Not recommended except for indications below for CT. CT Myelography OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive. (Slebus, 1988) (Bigos, 1999) (ACR, 2000) (Airaksinen, 2006) (Chou, 2007) Magnetic resonance imaging has largely replaced computed tomography scanning in the noninvasive evaluation of patients with painful myelopathy because of superior soft tissue resolution and multiplanar capability. Invasive evaluation by means of myelography and computed tomography myelography may be supplemental when visualization of neural structures is required for surgical planning or other specific problem solving. (Seidenwurm, 2000) The new ACP/APS guideline as compared to the old AHCPR guideline is more forceful about the need to avoid specialized diagnostic imaging such as computed tomography (CT) without a clear rationale for doing so. (Shekelle, 2008) A new meta-analysis of randomized trials finds no benefit to routine lumbar imaging (radiography, MRI, or CT) for low back pain without indications of serious underlying conditions, and recommends that clinicians should refrain from routine, immediate lumbar imaging in these patients. (Chou-Lancet, 2009).

**Indications for imaging – Computed tomography:**

- Thoracic spine trauma: equivocal or positive plain films, no neurological deficit
- Thoracic spine trauma: with neurological deficit
- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, infectious disease patient
- Evaluate pars defect not identified on plain x-rays
- Evaluate successful fusion if plain x-rays do not confirm fusion (Laasonen, 1989)”.

Based on a careful review of the evidence presented in the hearing, the claimant failed to meet his burden of overcoming the IRO decision by a preponderance of the evidence based medicine. The medical evidence presented by the claimant to support his contention that he was entitled to the proposed procedure was not persuasive and was inconsistent with the ODG. Consequently, the claimant is not entitled to the proposed lumbar myelogram with post myelogram CT scan for the compensable injury of \_\_\_\_\_.

With regard to the issue of timely appeal of the IRO decision, the evidence presented in the hearing revealed that the IRO decision was sent to the parties on August 19, 2008. The evidence further revealed that the claimant’s signed DWC-045A form requesting the medical contested case hearing was received by the Division Chief Clerk via fax on September 16, 2008.

Division Rule 133.308(t)(1)(B)(i) provides that a written appeal “must be filed with the Division’s Chief Clerk no later than the later of the 20th day after the effective date of this section or 20 days after the date the IRO decision is sent to the appealing party and must be filed in compliance with Division rules. Requests that are timely submitted to a Division location other than the Division’s Chief Clerk, such as a *local field office of the Division*, will be considered timely filed and forwarded to the Chief Clerk for processing; however, this may result in a delay in the processing of the request” (emphasis added).

The claimant's DWC-045A form contains a stamp indicating that the form was received at the Division Field Office in (City), Texas on September 3, 2008. Since the evidence strongly indicated that the claimant filed his signed DWC-045A form at a Division field office within 20 days of the date on which the IRO decision was sent, the claimant's appeal to the IRO decision was timely.

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.
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. The decision of the IRO was sent to the claimant on August 19, 2008.
4. The claimant filed a DWC-045A form at the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation on September 3, 2008.
5. A lumbar myelogram with post-myelogram CT scan is not health care reasonably required 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. Claimant timely appealed the decision of the IRO.
4. The preponderance of the evidence is not contrary to the decision of the IRO that a lumbar myelogram with post-myelogram CT scan is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant timely appealed the decision of the IRO.

Claimant is not entitled to a lumbar myelogram with post-myelogram CT scan 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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**AMERICAN HOME ASSURANCE COMPANY  
CORPORATION SERVICE COMPANY  
701 BRAZOS, SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 25th day of February, 2009.

Jennifer Hopens  
Hearing Officer