

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 scheduled for January 28, 2009 but reset to and held on March 11, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that the Claimant is not entitled to discography at L4-5 for the compensable injury of _____?

PARTIES PRESENT

Claimant/Petitioner appeared and was assisted by AC, ombudsman.
Carrier/Respondent appeared and was represented by WJG, attorney.

BACKGROUND INFORMATION

Claimant sustained an injury to his lumbar spine on _____ while working for (Employer). Claimant underwent an MRI of the lumbar spine on March 15, 2008 which revealed findings of mild to moderate left foraminal narrowing at L2-3, mild to moderate right foraminal narrowing at L4-5 and a mild disc protrusion at L5-S1. Claimant has undergone physical therapy, multiple epidural steroid injections and facet blocks for treatment of his lumbar injury. Claimant's treating doctor, Dr. M, has recommended a discogram in order to try and isolate the source of the Claimant's pain and discomfort. Dr. M recommended discography at L4-5. This procedure was denied by the Carrier and the Claimant requested review by an independent review organization (IRO). The IRO decision upheld that the Carrier's denial of the requested procedure and the Claimant requested this contested case hearing.

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 IRO concludes:

Discograms are rarely of any benefit unless a specific level of involvement is being looked at, with controls at other levels to determine if the suspected level is indeed the source of trouble. In this case, there is nothing on the MRI to suggest a particular level, the report indicating an L5-S1 disk rupture, with L2-3 and L4-5 involvement. Under these circumstances, discography may be more confusing than helpful. In cases such as this, the next logical step is usually electrodiagnostic testing.

The ODG criteria/recommendations for discography are as follows:

Discography is Not Recommended in ODG.

Patient selection criteria for Discography if provider & payor agree to perform anyway:

- o Back pain of at least 3 months duration
- o Failure of recommended conservative treatment including active physical therapy
- o An MRI demonstrating one or more degenerated discs as well as one or more normal appearing discs to allow for an internal control injection (injection of a normal disc to validate the procedure by a lack of a pain response to that injection)
- o Satisfactory results from detailed psychosocial assessment (discography in subjects with emotional and chronic pain problems has been linked to reports of significant back pain for prolonged periods after injection, and therefore should be avoided)
- o Intended as a screen for surgery, i.e., the surgeon feels that lumbar spine fusion is appropriate but is looking for this to determine if it is not indicated (although discography is not highly predictive) (Carragee, 2006) NOTE: In a situation where the selection criteria and other surgical indications for fusion are conditionally met, discography can be considered in preparation for the surgical procedure. However, all of the qualifying conditions must be met prior to proceeding to discography as discography should be viewed as a non-diagnostic but confirmatory study for selecting operative levels for the proposed surgical procedure. Discography should not be ordered for a patient who does not meet surgical criteria.
- o Briefed on potential risks and benefits from discography and surgery
- o Single level testing (with control) (Colorado, 2001)
- o Due to high rates of positive discogram after surgery for lumbar disc herniation, this should be potential reason for non-certification

In response to the determination of the IRO, the Claimant offered a December 4, 2008 report prepared by Dr. M. Dr. M responded to the concerns raised by the IRO noting that the discogram was requested for L3, L4 and L5 so that L3 could be used as a control for the specific levels of involvement at L4 and L5. Dr. M also stated that, "It is well documented that EMG and nerve conduction velocity studies do not point to the source of pain. They are only used to confirm already suspected levels and neurologic involvement." The Claimant testified that he

did undergo an electrodiagnostic study at the request of Dr. K about a month ago, however, the Claimant offered no medical documentation at this hearing to reflect that this study was performed. Dr. M concluded that it was in the best interest of the Claimant that he undergoes discographic evaluation prior to considering any form of surgical intervention. Dr. M did not offer evidence based medicine to support his opinion nor did he address the recommendations as set forth in the ODG for discographic evaluation. The preponderance of the evidence presented at this hearing is not contrary to the determination of the IRO and the Claimant is not entitled to discography at L4-5 for treatment of the compensable injury of _____.

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).
 - C. Claimant sustained a compensable injury on _____.
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 3.
3. Claimant failed to provide evidence-based medicine to support his request for discography at L4-5.
4. Discography at L4-5 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 IRO decision that Claimant is not entitled to discography at L4-5 for the compensable injury of _____.

DECISION

Claimant is not entitled to discography at L4-5 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is:

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TX 75063**

Signed this 11th day of March, 2009.

Carol A. Fougerat
Hearing Officer