

**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 March 12, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to an EMG/NCV of the upper extremities for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by RP-R, ombudsman. Respondent/Carrier appeared and was represented by DP, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his right wrist and low back on \_\_\_\_\_ as a result of a slip and fall while working as a dish washer. Claimant underwent an MRI of the lumbar spine on March 11, 2008 which revealed multilevel disc desiccation, bulging, spondylosis and facet arthropathy, L5-S1 shallow broad-based posterior disc protrusion and mild L5-S1 foraminal stenosis. An EMG/NCV of the lower extremities was performed on September 5, 2008 by Dr. A. Dr. A's assessment was possibility for an axonal neuropathy, although, due to the fact that the Claimant has no symptoms in the upper extremities, this is more likely severe spinal stenosis with polyradiculopathy or just plain polyradiculopathy affecting all myotomes at levels L3-S1. Dr. A suggested testing one upper extremity if a question remained regarding possible axonal neuropathy. The Claimant's treating doctor, Dr. P-S, recommended the EMG/NCV of the upper extremities to compare and possibly identify whether the Claimant has some axonal problems. The EMG/NCV of the upper extremities was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, a board certified orthopedic surgeon, concluded that the clinical records do not support the suspicion of axial ulnar neuropathy and, as such, there would be no indication that an EMG would be medically necessary in this particular setting. The IRO reviewer noted that the Claimant did not meet the criteria specified in the Official Disability Guidelines (ODG) and medical necessity did not exist for an EMG/NCV of the upper extremities.

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 *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*.

Under the *ODG*, in reference to EMG's for the neck and upper back, the recommendation is:

Recommended (needle, not surface) as an option in selected cases. *Indications when particularly helpful:* EMG may be helpful for patients with double crush phenomenon, in particular, when there is evidence of possible metabolic pathology such as neuropathy secondary to diabetes or thyroid disease, or evidence of peripheral compression such as carpal tunnel syndrome.

Under the *ODG*, in reference to nerve conduction studies (NCS):

Not recommended. There is minimal justification for performing nerve conduction studies when a patient is presumed to have symptoms on the basis of radiculopathy. (Utah, 2006) See also the Carpal Tunnel Syndrome Chapter for more details on NCS. Studies have not shown portable nerve conduction devices to be effective.

Dr. P-S recommends the EMG/NCV of the upper extremities based on the impression given by Dr. A following the EMG/NCV of the lower extremities. Neither Dr. P-S nor Dr. A explain how an EMG/NCV of the upper extremities would be medically necessary for the treatment of the Claimant's compensable lumbar spine and right wrist injuries. The Claimant offered no medical evidence in response to the determination of the IRO or addressing the recommendations in the *ODG*. The Claimant failed to present evidence based medicine contrary to the determination of the IRO and the Claimant is not entitled to an EMG/NCV of the upper extremities 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), 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. The treating doctor requested the Claimant undergo an EMG/NCV of the upper extremities for the compensable injury of \_\_\_\_\_.
- 4.. The Claimant failed to provide evidence based medicine contrary to the IRO's determination that an EMG/NCV of the upper extremities 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 an EMG/NCV of the upper extremities is a not health care service reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to an EMG/NCV of the upper extremities for the compensable injury of \_\_\_\_\_.

### **ORDER**

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL OLIVER, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TX 78723**

Signed this 12th day of March, 2009.

Carol A. Fougerat  
Hearing Officer