

**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 December 16, 2008 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to the proposed discography and CT scan?

**PARTIES PRESENT**

Petitioner/Claimant did not appear.

Respondent/Carrier appeared and was represented by EL, adjuster.

Petitioner/Subclaimant appeared *pro se*.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on \_\_\_\_\_. Claimant had a lumbar fusion at the L5-S1 which was later revised in 2004 by Dr. D. Claimant continued treatment under Dr. D's care. In August of 2005, Dr. D ordered an x-ray. The x-ray showed the hardware to be intact and that there was a solid fusion. On July 11, 2007, Dr. D ordered an MRI. The MRI revealed a minimal disc bulge at the L4-L5 level with a slight bilateral lateral recess stenosis but did not show any recurrent disc herniation. After Claimant's continued complaints regarding low back pain, Dr. D's treatment plan included a request for two lumbar facet blocks, a discography and a CT scan. Claimant was denied preauthorization for the discography and the CT Scan but granted one lumbar facet block. The preauthorization doctor based his decision on the Official Disability Guidelines, which states that discography is not recommended. The doctor further stated there was no indication to support that Claimant would benefit from a discogram, that Claimant had a stable fusion, and that there was no significant evidence of degenerative disc disease. The doctor also determined that the CT scan was not medically reasonable necessary.

The IRO upheld the determination at the preauthorization level regarding the discography and CT Scan, but overturned the decision regarding the lumbar facet block request and allowed Claimant to have two facet blocks. Immediately after the decision, Claimant had the facet blocks; however, Dr. D stated that the injections did not provide much relief.

**ODG APPLICATION**

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 states the following regarding discography:

Not recommended. In the past, discography has been used as part of the pre-operative evaluation of patients for consideration of surgical intervention for lower back pain. However, the conclusions of recent, high quality studies on discography have significantly questioned the use of discography results as a preoperative indication for either IDET or spinal fusion. These studies have suggested that reproduction of the patient's specific back complaints on injection of one or more discs (concordance of symptoms) is of limited diagnostic value. (Pain production was found to be common in non-back pain patients, pain reproduction was found to be inaccurate in many patients with chronic back pain and abnormal psychosocial testing, and in this latter patient type, the test itself was sometimes found to produce significant symptoms in non-back pain controls more than a year after testing.) Also, the findings of discography have not been shown to consistently correlate well with the finding of a High Intensity Zone (HIZ) on MRI. Discography may be justified if the decision has already been made to do a spinal fusion, and a negative discogram could rule out the need for fusion (but a positive discogram in itself would not allow fusion). ). (Carragee-Spine, 2000) (Carragee2-Spine, 2000) (Carragee3-Spine, 2000) (Carragee4-Spine, 2000) (Bigos, 1999) (ACR, 2000) (Resnick, 2002) (Madan, 2002) (Carragee-Spine, 2004) (Carragee2, 2004) (Maghout-Juratli, 2006) (Pneumaticos, 2006) (Airaksinen, 2006).

The ODG states the following regarding CT scan:

Although discography, especially combined with CT scanning, may be more accurate than other radiologic studies in detecting degenerative disc disease, its ability to improve surgical outcomes has yet to be proven.

The ODG also states that although discography is not recommended, if the provider and payor agree to perform the discography certain criteria should be followed for patient selection; and if the Claimant does not satisfy the criteria then the discography should not be performed. One of the criteria requires a satisfactory result from a detailed psychosocial assessment. The ODG states that although discography, especially combined with CT scanning, may be more accurate

than other radiologic studies in detecting degenerative disc disease, its ability to improve surgical outcomes has yet to be proven.

Dr. D stated that Claimant had transitional syndrome and that a discography was necessary to determine the source of the pain. Dr. D also stated that he would not know if Claimant needs surgery until the discography was done. Additionally, Dr. D stated that a psychosocial evaluation was performed, however, a report was not offered into evidence. Dr. D, also, offered several medical articles into evidence. The articles addressed the various opinions regarding the use of discography and CT scanning. The articles acknowledged the MRI, as opposed to CT scanning, is the image modality of choice for diagnosing lateral herniations. The articles also acknowledged that discography is controversial. The articles stated that the use of the discography to evaluate abnormalities on CT scans, myelographs, or MRIs; to select symptomatic discs; to support the existence of discogenic pain; or to determine whether surgery is necessary is not scientifically proven.

In the instant case, Petitioner failed to meet its burden of proof. While Petitioner presented evidence which discussed the controversial aspects of the requested treatment, these articles are more supportive of the IRO decision. Neither Claimant nor Petitioner offered evidence based medicine to contradict the findings of the IRO. Thus the preponderance of the evidence is not contrary to the decision of the IRO that the claimant is not entitled to the proposed discography and CT scan.

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. On \_\_\_\_\_, Claimant sustained a compensable injury.
  - D. The Independent Review Organization determined that Claimant should not have a discography and CT scan.
2. Carrier delivered to Claimant and Petitioner 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 request for CT scan and discography 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. The preponderance of the evidence is not contrary to the decision of the IRO that discography and CT scan is not health care reasonably required for the compensable injury of \_\_\_\_\_.

## DECISION

Claimant is not entitled to CT scan and discography 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 **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS ST., SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 25<sup>th</sup> day of February, 2009.

Alisha Darden  
Hearing Officer