

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 April 7, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a cervical discogram for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MF, ombudsman. Respondent/Carrier appeared and was represented by GT, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____, as she was loading computer equipment into her car. She testified that she sustained injuries to her neck, right arm and low back. In the course of treatment for the compensable injury she has undergone a cervical fusion at C5-6 and C6-7. She has also undergone two revision surgeries at the fusion site, but continues to experience unremitting neck pain. She has been treating with Dr. AC, a pain management specialist, who has referred her to Dr. RP in (City), (State). Dr. RP recommended that Claimant have a cervical discogram in an attempt to determine the levels of her pain generators. He did not specify the proposed level or levels for the requested discogram. Carrier refused to preauthorize the requested discogram. Claimant appealed the denial and the matter was submitted to Independent Review Inc., an independent review organization (IRO) selected by the Texas Department of Insurance. The IRO upheld Carrier's denial of the cervical discogram.

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 (Texas Labor Code §408.021). "Health care reasonably required" is defined 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, generally accepted standards of medical practice recognized in the medical community (Texas Labor Code §401.011(22-a)). "Evidence based medicine" means 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 (Texas Labor Code §401.011 (18-a)). In accordance with the above statutory guidance, Rule 137.100 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 reasonably required.

Discography is not recommended by the ODG as a clinically appropriate and effective protocol in the treatment of acute and chronic neck and upper back pain. As noted by Dr. KB, MD, the physician reviewer on reconsideration of Carrier's initial denial, the ODG states that discography is:

Not recommended. Conflicting evidence exists in this area, though some recent studies condemn its use as a preoperative indication for IDET or Fusion, and indicate that discography may produce symptoms in control groups more than a year later, especially in those with emotional and chronic pain problems. (Carragee, 2000) (Carragee2, 2000) (Bigos, 1999) (Grubb, 2000) (Zeidman, 1995) Cervical discography has been used to assist in determining the specific level or levels causing the neck pain and, potentially, which levels to fuse; however, controversy regarding the specificity of cervical discograms has also been debated and more research is needed. (Wieser, 2007) Assessment tools such as discography lack validity and utility. (Haldeman, 2008) 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. It is routinely used before IDET, yet only occasionally used before spinal fusion. (Cohen, 2005)

Dr. RP testified and acknowledged the lack of evidence based medicine supporting the efficacy of cervical discography. He testified that he is preparing an abstract for publication regarding his success in using discography in making a decision to proceed to cervical fusion for 37 patients. He testified that he is familiar with negative reports on the utilization of cervical discography and believes that the expertise in the physician performing the discogram may be a significant factor in the success he has had in using discography in treatment planning.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See Black vs. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. *Black v. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999). In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence (Rule 133.308(t)). Dr. RP has testified that he has personal experience that supports those studies that indicate that cervical discography can be a useful diagnostic tool. His experience is characteristic of the acknowledged controversy within the medical community regarding the efficacy of cervical discography. The IRO decision is consistent with the provisions of the ODG and the evidence based medicine upon which those provisions are founded. Cervical discography is not recommended in the ODG due to the conflicting findings in the credible scientific studies, including peer-reviewed medical literature

and other current scientifically based texts and treatment and practice guidelines. Claimant has failed to adduce sufficient evidence based medicine to refute the IRO decision.

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 _____.
 - D. The Texas Department of Insurance appointed Independent Review Inc. as the independent review organization (IRO) in this matter.
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 IRO determined that a cervical discogram was not medically necessary because it is not a recommended treatment under the ODG and the medical documentation provided to the IRO did not justify a departure from the recommendations of the ODG.
4. Although the doctor recommending the discogram testified that he has had success in utilizing cervical discograms as a planning tool for cervical fusions, the preponderance of the evidence based medicine is not contrary to the IRO decision.
5. A cervical discogram 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 decision of IRO that a cervical discogram is not reasonably required medical care for the compensable injury of _____.

DECISION

Claimant is not entitled to a cervical discogram 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 **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET #1050
AUSTIN, TEXAS 78701.**

Signed this 8th day of April, 2009.

KENNETH A. HUCHTON
Hearing Officer