

**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 27, 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 a repeat cervical MRI for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by JR, ombudsman. Respondent/Carrier appeared and was represented by SS, adjuster.

**BACKGROUND INFORMATION**

Claimant/Petitioner (Claimant) sustained a compensable injury on \_\_\_\_\_. Claimant has undergone a lumbar fusion and she had an MRI of the cervical spine in 2003 which revealed evidence of disc bulging and some mild central canal stenosis at C5-C6. The Claimant underwent an EMG of the upper extremities on February 16, 2006 which revealed evidence suggestive of bilateral C5-C6 chronic radiculopathy. The Claimant presented to her treating doctor, Dr. P, with complaints of pain in the cervical spine and Dr. P documented pain upon palpation of the cervical spine with paravertebral muscle spasms and limitation of movement of the neck in the forward and lateral positions. Dr. P has recommended a repeat MRI of the cervical spine. The proposed procedure was denied by the Carrier/Respondent (Carrier) and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, a board certified orthopedic surgeon, concluded that a repeat cervical spine MRI was not medically necessary because the records offered no evidence of any neurological deficit. The IRO reviewer noted that, based upon the records provided, the MRI scan has been requested for pain and spasm and, without supporting evidence and required documentation in the medical records, the repeat MRI scan falls outside the ODG recommendations.

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*.

The ODG recommends the following for MRI's of the cervical spine:

**Indications for imaging -- MRI (magnetic resonance imaging):**

- Chronic neck pain (= after 3 months conservative treatment), radiographs normal, neurologic signs or symptoms present
- Neck pain with radiculopathy if severe or progressive neurologic deficit
- Chronic neck pain, radiographs show spondylosis, neurologic signs or symptoms present
- Chronic neck pain, radiographs show old trauma, neurologic signs or symptoms present
- Chronic neck pain, radiographs show bone or disc margin destruction
- Suspected cervical spine trauma, neck pain, clinical findings suggest ligamentous injury (sprain), radiographs and/or CT "normal"
- Known cervical spine trauma: equivocal or positive plain films with neurological deficit

Pursuant to the ODG recommendations, MRI's are indicated only if there has been progression of neurologic deficit. The Claimant testified that her cervical symptoms have worsened and her treating doctor has diagnosed cervical radiculopathy; however, the treating doctor provided no explanation regarding his basis for the requested repeat MRI nor has he addressed the concerns raised by the IRO or the recommendations in the *ODG* for repeat MRI's, specifically the lack of any neurological deficits as a result of this injury. Based on the evidence presented, the Claimant failed to provide evidence based medicine sufficient to contradict the determination of the IRO and the preponderance of the evidence is not contrary to the decision of the IRO.

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 the (Employer), when she 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 a repeat MRI of the cervical spine for the compensable injury of \_\_\_\_\_.
4. The requested service is not consistent with the *ODG* criteria for repeat MRI's.
5. The Claimant failed to provide evidence based medicine contrary to the IRO's determination that a repeat cervical MRI is not a reasonable and necessary health care service 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 a repeat cervical MRI is not health care service reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to a repeat MRI of the cervical spine 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 **VIRGINIA SURETY COMPANY INC.** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM  
350 N. ST. PAUL STREET  
DALLAS, TX 75201**

Signed this 28th day of April, 2009.

Carol A. Fougerat  
Hearing Officer