

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 May 18, 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 a lumbar myelogram followed by a CT scan without contrast; a CAT scan, lumbar spine with contrast; and myelography lumbosacral RAS-S are not reasonably required health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RH, ombudsman. Respondent/Carrier appeared and was represented by DH, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable low back injury in a slip and fall accident on _____. An MRI, done on February 6, 2008, revealed mild narrowing and desiccation with a mild protrusion/herniation of the disc at L1-2, mild narrowing and desiccation at L2-3, and mild narrowing, desiccation, and facet arthrosis on the left more than the right producing mild compression of the neural foramina and lateral canal on the right at L3-4. With reported increasing low back pain, pain radiating down both lower extremities, and evidence of weakness of the dorsiflexors and evertors on the right foot and a positive straight leg raising test bilaterally, (Dr. S.) recommended a myelogram and CT scan. Carrier refused to preauthorize the studies and Claimant requested that an IRO be appointed to review the denials. In a report dated February 16, 2009, the IRO, (Independent Review Organization), upheld Carrier's denials of a lumbar myelogram followed by CAT scan without contrast, CAT scan, lumbar spine, with contrast, and myelography lumbosacral-RAS S. The IRO physician reviewer, a board certified orthopedic surgeon, noted that Claimant's alleged radiculopathy had not been clarified with electrodiagnostic studies and stated that myelography was not supported, citing Official Disability Guidelines (ODG) treatment of myelography as of December 20, 2008. Claimant subsequently requested a contested case hearing to appeal the IRO decision.

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 ODG, and such treatment is presumed to be reasonably required.

The current edition of the ODG addresses computed tomography (CT) and CT myelography for low back injuries, stating:

Not recommended except for indications below for CT. CT Myelography OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive. (Slebus, 1988) (Bigos, 1999) (ACR, 2000) (Airaksinen, 2006) (Chou, 2007) Magnetic resonance imaging has largely replaced computed tomography scanning in the noninvasive evaluation of patients with painful myelopathy because of superior soft tissue resolution and multiplanar capability. Invasive evaluation by means of myelography and computed tomography myelography may be supplemental when visualization of neural structures is required for surgical planning or other specific problem solving. (Seidenwurm, 2000) The new ACP/APS guideline as compared to the old AHCPR guideline is more forceful about the need to avoid specialized diagnostic imaging such as computed tomography (CT) without a clear rationale for doing so. (Shekelle, 2008) A new meta-analysis of randomized trials finds no benefit to routine lumbar imaging (radiography, MRI, or CT) for low back pain without indications of serious underlying conditions, and recommends that clinicians should refrain from routine, immediate lumbar imaging in these patients. (Chou-Lancet, 2009)

Indications for imaging -- Computed tomography:

- Thoracic spine trauma: equivocal or positive plain films, no neurological deficit
- Thoracic spine trauma: with neurological deficit
- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, infectious disease patient
- Evaluate pars defect not identified on plain x-rays
- Evaluate successful fusion if plain x-rays do not confirm fusion (Laasonen, 1989)

There is no evidence that any of the indications for CT imaging set forth in the ODG, exist, but Dr. S believes that Claimant should undergo the requested procedure. 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. 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).

In accordance with Rule 133.308(t), Claimant, as the party appealing the IRO decision, has the burden of overcoming the IRO decision by a preponderance of evidence-based medical evidence. In response to questions tendered by the ombudsman assisting Claimant, Dr. S stated that Claimant "needs a lumbar myelogram to corroborate and better define the findings of the MRI" and that he needs a myelogram and CT scan post myelogram "in order to have a complete identification prior to [a] referral for surgery." Dr. S fails to explain how or why, in this particular case, the more invasive and less sensitive imaging would be either necessary or useful. Dr. S is qualified to offer his opinion and it is relevant to the issues in this matter, but his opinion that a myelogram and post myelogram CT scan are needed for surgical planning has no proven foundation in evidence based medicine and is contrary to the precautionary statements in the ODG. Claimant has failed to show by a preponderance of the evidence that the IRO decision is incorrect.

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 (Self-Insured Employer).
 - C. Claimant sustained a compensable injury on _____.
 - D. (Independent Review Organization) to act 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 the requested lumbar myelogram followed by a CT scan without contrast; CAT scan, lumbar spine with contrast; and myelography lumbosacral RAS-S were inconsistent with treatment guidelines set forth in the ODG and that Carrier's earlier denial of those procedures should be upheld.
4. A lumbar myelogram followed by a CT scan without contrast; a CAT scan, lumbar spine with contrast; and myelography lumbosacral RAS-S are 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 lumbar myelogram followed by a CT scan without contrast; a CAT scan, lumbar spine with contrast; and myelography lumbosacral RAS-S are not reasonably required medical care for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar myelogram followed by a CT scan without contrast; a CAT scan, lumbar spine with contrast; and myelography lumbosacral RAS-S 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 **(SELF-INSURED EMPLOYER)** and the name and address of its registered agent for service of process is

**CS - AR
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 19th day of May, 2009.

KENNETH A. HUCHTON
Hearing Officer