

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 July 27, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a lumbar magnetic resonance imaging (MRI) for the compensable injury of _____.

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman. Respondent/Carrier was represented by WS, attorney.

BACKGROUND INFORMATION

Claimant was injured when he moved cases during the course and scope of employment on _____. He testified that he has not followed the advice of the first specialist who recommended that he have surgery on his back. He said that he has had two injections in the back and that the first one provided relief. He said that he has been referred to Dr. T who will not schedule an appointment unless Claimant undergoes another MRI. Claimant had previous MRIs in April of 2006, August of 2006, February of 2007, and August of 2007. Claimant said that he believes Dr. T needs to see an additional MRI so that Dr. T will know how to fix Claimant's back.

The IRO upheld the previous adverse determinations that found no medical necessity for another MRI. The IRO, relying on the *Official Disability Guidelines* (ODG) wrote that there is no reason for another MRI since there have not been changes noted in the MRIs since August of 2006.

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 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. Also, in accordance with Division Rule 133.308 (t), a decision issued by an IRO is not considered an agency decision and 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.

In reaching its conclusion, the IRO relied upon evidence based medicine by citing the ODG. The ODG states, in pertinent part, the following:

Recommended for indications below. MRI's are test of choice for patients with prior back surgery. Repeat MRI's are indicated only if there has been progression of neurologic deficit. (Bigos, 1999) (Mullin, 2000) (ACR, 2000) (AAN, 1994) (Aetna, 2004) (Airaksinen, 2006) (Chou, 2007)

Claimant relied on three articles cited in the ODG regarding MRIs and two other medical articles, but provided no expert witness evidence interpreting those articles. Claimant's documentary evidence did not explain why Claimant should have another MRI. The first three articles were relied on by the ODG to support not having additional MRIs. The next two articles discussed lumbar disc disease and lumbar spinal stenosis and neurogenic claudication. Claimant's evidence failed to show that Claimant met the criteria of the ODG for an additional MRI: the evidence did not show that Claimant has had a progression of neurologic deficit. Claimant's evidence did not include opinions from doctors to address the concern of the IRO that Claimant did not qualify for an additional MRI. Claimant failed to present evidence based medicine to overcome the decision of the IRO. The preponderance of the evidence was 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, who was the employee of (Employer), 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. Claimant did not meet the ODG criteria for an additional MRI because he failed to establish that he has a progression of neurologic deficit.

4. A lumbar magnetic resonance imaging 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 Claimant is not entitled to a lumbar magnetic imaging for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar magnetic imaging 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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST
SUITE 300
IRVING, TX 75063**

Signed this 24th day of August, 2009.

CAROLYN F. MOORE
Hearing Officer