

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.

ISSUE

A contested case hearing was held on August 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 the Claimant is not entitled to a repeat lumbar MRI?

PARTIES PRESENT

The petitioner/claimant appeared and was represented by FW, attorney. The respondent/carrier appeared and was represented by PB, attorney.

BACKGROUND INFORMATION

The claimant sustained his compensable injury on _____ when he slipped on some metal stairs and fell, landing on a concrete floor. The injury was assessed in the first medical reports as a lumbar spine sprain/strain. The claimant was returned to work, which was medium to heavy in nature, with the only modification being the requirement to wear a lumbar support. The claimant was returned to unrestricted work on April 28, 2004. The claimant has had some variable ongoing back pain since the date of injury, but continued working until October 19, 2008.

The claimant had his first and only MRI in March, 2004. It revealed "no significant disc bulge or disc herniation" at L1-3, a "mild left lateral annular disc bulge" at L3-4, a "mild 2 mm broad-based posterior annular disc bulge" at L4-5, and a "mild 1 to 2 mm broad-based posterior annular disc bulge" at L5-S1. In October, 2008, by agreement between the parties, the disc bulges at L3-4, L4-5, and L5-S1, and the foraminal stenosis at L4-5 and L5-S1 were added as part of the compensable injury.

The medical records show regular medical treatment in 2004 by Dr. R, D. O. and Dr. H, M. D. However, after November, 2004, the claimant saw Dr. H only twice in 2005, once in 2006, and once in 2007, based on medical records offered by the parties. During that time, the claimant received three or four sacral epidural injections, took no medications, and continued working at a medium to heavy work level with moderate pain levels. Since the claimant's pain had continued to some degree since 2004, Dr. H indicated in an August, 2007 chart note that he wanted a new lumbar MRI scan. A utilization reviewer in December, 2007 denied the request by Dr. H for a repeat MRI on the basis that the compensable injury was a lumbar sprain/strain only—this was prior to the October, 2008 agreement between the parties—and that the prior MRI indicated only degenerative disc disease.

In an April 20, 2009 peer review, Dr. M, M. D. noted that even with the specific disc levels added as part of the compensable injury, the claimant's injury was one of multiple level degenerative disc disease, that the claimant was not a surgical candidate, but that a repeat MRI "might be appropriate" to see if the claimant's condition had progressed over the prior five years. In a May 14, 2009 RME, Dr. H, M. D. opined that the claimant "does not have objective signs that would indicate the need for objective testing such as a lumbar MRI." A January 29, 2008 designated doctor report by Dr. S, M. D. found no objective evidence of neurological deficits or radiculopathy.

In reviewing a renewed request by Dr. M (2), M. D. for a repeat MRI, the first utilization review doctor denied the request because the medical records indicated only symptoms of chronic back pain, with no evidence of any recent change in the neurological examination. The utilization review doctor who reviewed the request on reconsideration also denied the request not only because there was no evidence of any new or progressive neurologic change, but also because there was no evidence at all of radiculopathy.

An IRO reviewer, an orthopaedic surgeon, upheld the carrier's denial of a repeat lumbar MRI. The reviewer noted that there had basically been no change in the Claimant's condition since the original MRI, and that the claimant had complained of back pain since the date of the compensable injury. The reviewer found no history of recent trauma, a new event, or progressive radicular symptoms since the original MRI. The reviewer found the Claimant's condition to be "rather stable" with his only symptomatology to be back pain.

DISCUSSION

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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. 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.

On the date of this medical contested case hearing, the ODG provides the following with regard to a repeat lumbar MRI:

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)

Dr. Hu, D. C. testified on behalf of the claimant's request for a repeat lumbar MRI. Dr. Hu asserted that it was necessary to order a repeat MRI at this time since the claimant has radicular symptoms which have worsened since the original MRI. There is no evidence that the claimant has radicular symptoms or neurological deficits. In regard to any worsening of the 46 year old claimant's symptomology, he has degenerative disc disease at virtually every level of his lumbar spine, and he continued to work at moderate to heavy work in the four to five years following the compensable injury.

Based on a careful review of the evidence presented in the hearing, the claimant failed to meet his burden of overcoming the IRO decision by a preponderance of the evidence-based medicine. The IRO decision in this case is based on the ODG and the evidence revealed that the claimant failed to meet all of the necessary criteria for a repeat lumbar MRI as prescribed in the ODG. The preponderance of the evidence-based medicine is not contrary to the decision of the IRO and, consequently, the claimant is not entitled to the proposed repeat lumbar MRI.

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 Workers' Compensation Division of the Texas Department of Insurance.
 - B. On _____, the Claimant was the employee of (Employer).
 - C. On _____, the claimant sustained a compensable injury to his lumbar spine.
 - D. The compensable injury of _____ extends to and includes disc bulges at L3-4, L4-5, and L5-S1, and foraminal stenosis at L4-5 and L5-S1 pursuant to the benefit dispute agreement dated October 7, 2008.
 - E. The IRO determined that the claimant is not entitled to a repeat lumbar MRI.
2. The Carrier delivered to the Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. It has been approximately five years since the Claimant's last MRI.
4. There is no evidence that the claimant has any neurological deficits.
5. A repeat MRI is not health care reasonably required for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 lumbar MRI is not health care reasonably required for the compensable injury of _____.

DECISION

The claimant is not entitled to a repeat lumbar MRI for the compensable injury of _____.

ORDER

The carrier is not liable for the benefits at issue in this hearing. The claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **LUMBERMEN'S UNDERWRITING ALLIANCE**, and the name and address of its registered agent for service of process is

**SETH MORIN
4100 ALPHA ROAD, SUITE 610
DALLAS, TEXAS 75244**

Signed this 26th day of August, 2009.

William M. Routon, II
Hearing Officer