

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 26, 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 myelogram CT scan of the cervical spine for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

The Claimant was involved in a serious motor vehicle accident on _____ in which his vehicle was hit from behind by an eighteen wheeler. The Claimant sustained loss of consciousness. He awoke with neck pain as well as right elbow pain. A cervical MRI on October 26, 2006 revealed C6-7 spinal canal stenosis to 7 mm and spinal cord compression as well as right side severe neural foraminal stenosis with impingement of the exiting nerve root. A second MRI, in March, 2008, revealed moderate to severe bilateral neural foraminal stenosis at the C6-7 level. The claimant testified that he had undergone a third MRI a few days before the hearing, but the results were not in evidence.

Dr. B, M. D., on February 29, 2008, diagnosed cervical radiculopathy/myelopathy, based on his physical examination of the Claimant. However, the results of an upper extremities EMG performed August 13, 2008 were consistent only with mild bilateral carpal tunnel syndrome and left tardy ulnar palsy, with "no evidence of any . . . radiculopathy . . ." Designated doctor Dr. C, D. O. did report in April, 2008 sensory loss and atrophy in the claimant's upper extremities.

In his April, 2008 designated doctor report, Dr. C also noted that the claimant had not undergone any conservative treatments "apparently because the insurance carrier has not approved any treatments to date" other than "one injection in his neck" which provided the claimant only short-term relief. The claimant testified that he had actually received three injections, but with no lasting relief. The claimant further testified that he had received one session of physical therapy before that was denied by the carrier.

On December 5, 2006, Dr. H, M. D., the Claimant's treating doctor at the time, opined that the Claimant's neck problems were significant enough to warrant a neurosurgical consult. There have been several medical reports since then that have opined that the claimant is a surgical

candidate. However, there is no definitive statement in the medical records by any doctor that the claimant needs surgery imminently, with a specific surgical procedure proposed. As recently as November 13, 2008, neurosurgeon Dr. Ba, M. D. was recommending:

1. Initiating physical therapy for symptomatic relief
2. Evaluation for epidural steroid therapy
3. A CT myelogram of the cervical spine to better evaluate foraminal and central canal stenosis

Dr. Ba's answer, in August, 2009, to a written question from the claimant was that the claimant was a "potential" surgical candidate. Dr. R, D. O., performing an impairment certification exam in June, 2009, stated, "I don't know if [the claimant] has any surgery planned at this point"

In reviewing the request by Dr. F, M. D. for a myelogram CT scan of the cervical spine, the first utilization review doctor, an internist, noted, for reasons not made clear, that the date of injury was over two years prior to his review. He also noted that myelograms were not recommended except for preoperative planning, and that surgical plans were not indicated in the medical reports he received for review.

The utilization review doctor who reviewed the request on reconsideration, a physical and rehab medicine specialist, upheld the denial on the basis that MRIs in this case were the "procedure of choice" and that there was no "indication of confusion with the previous MRI or evaluation presented . . ." from the EMG. The reviewer noted that there was no record of attempted conservative care, except for "evidence of only one physical therapy session."

An IRO reviewer, a physical medicine and rehabilitation doctor, upheld the carrier's denial of a myelogram CT scan. Although listing cervical radiculopathy of the right upper extremity as part of the claimant's diagnosis, the reviewer opined that the claimant did not have a true cervical radiculopathy based on the August, 2008 EMG. The reviewer cited the portion of the ODG on CT scanning which states that patients with normal radiographs and neurologic signs or symptoms should undergo an MRI. The reviewer then noted that the claimant had had an MRI, and that the ODG did not support the need for a CT scan based on the documents sent to him for review.

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.

On the date of this medical contested case hearing, the ODG provides the following with regard to myelogram CT scans of the cervical spine:

Computed tomography (CT)

Not recommended except for indications below. Patients who are alert, have never lost consciousness, are not under the influence of alcohol and/or drugs, have no distracting injuries, have no cervical tenderness, and have no neurologic findings, do not need imaging. Patients who do not fall into this category should have a three-view cervical radiographic series followed by computed tomography (CT). In determining whether or not the patient has ligamentous instability, magnetic resonance imaging (MRI) is the procedure of choice, but MRI should be reserved for patients who have clear-cut neurologic findings and those suspected of ligamentous instability. (Anderson, 2000) (ACR, 2002) See also ACR Appropriateness Criteria™. MRI or CT imaging studies are valuable when potentially serious conditions are suspected like tumor, infection, and fracture, or for clarification of anatomy prior to surgery. MRI is the test of choice for patients who have had prior back surgery. (Bigos, 1999) (Colorado, 2001) For the evaluation of the patient with chronic neck pain, plain radiographs (3-view: anteroposterior, lateral, open mouth) should be the initial study performed. Patients with normal radiographs and neurologic signs or symptoms should undergo magnetic resonance imaging. If there is a contraindication to the magnetic resonance examination such as a cardiac pacemaker or severe claustrophobia, computed tomography myelography, preferably using spiral technology and multiplanar reconstruction is recommended. (Daffner, 2000) (Bono, 2007) CT scan has better validity and utility in cervical trauma for high-risk or multi-injured patients. (Haldeman, 2008)

Indications for imaging -- CT (computed tomography):

- Suspected cervical spine trauma, alert, cervical tenderness, paresthesias in hands or feet
- Suspected cervical spine trauma, unconscious
- Suspected cervical spine trauma, impaired sensorium (including alcohol and/or drugs)
- Known cervical spine trauma: severe pain, normal plain films, no neurological deficit
- Known cervical spine trauma: equivocal or positive plain films, no neurological deficit
- Known cervical spine trauma: equivocal or positive plain films with neurological deficit

Myelography

Not recommended except for surgical planning. Myelography or CT-myelography may be useful for preoperative planning. (Bigos, 1999) (Colorado, 2001)

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. There is conflicting evidence as to whether the claimant meets all of the necessary criteria for a myelogram CT scan prescribed in the ODG—a neurological deficit, exhaustion of conservative care, and the imminency of surgery requiring preoperative planning. 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 a myelogram CT scan of the cervical spine.

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 cervical spine.
 - D. The IRO determined that the claimant is not entitled to a myelogram CT scan of the cervical spine.
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. A myelogram CT scan of the cervical spine is not health care reasonably required for the compensable injury.

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 myelogram CT scan of the cervical spine is not health care reasonably required for the compensable injury.

DECISION

The claimant is not entitled to a myelogram CT scan of the cervical spine.

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 **XL SPECIALTY INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**KIRK HOOD
1021 MAIN STREET, SUITE 1150
HOUSTON, TEXAS 77002**

Signed this 3rd day of September, 2009.

William M. Routon, II
Hearing Officer