

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 August 27, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to CT myelogram of the lumbar spine with flexion and extension views, to rule out pseudoarthrosis, and to assess adjacent level for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by KW, ombudsman.
Respondent/Carrier appeared and was represented by CL, attorney.

BACKGROUND INFORMATION

Claimant and Dr. S testified at the August 27, 2009, CCH. Claimant is currently about 53-years-old, and was injured at work on _____, when he tripped over pallets and twisted his lower back. On February 22, 2000, Claimant underwent the following surgical procedure:

1. Posterior lumbar interbody fusion at L5-S1 and L3-4 with bilateral lumbar foraminotomies and laminectomies, facetectomies and medial and lateral bilateral discectomies at L5-S1 and L3-4 with the microscope and microdissection and Midas Rex.
2. Placement of Ray threaded Cage prosthetic devices two at L5-S1 and two at L3-4.
3. Placement of morcelized autograft from the same incision into each Ray threaded Cage prosthetic device.
4. Posterolateral arthrodesis with autogenous bone and Dynagraft bone Matrix.
5. Insertion of Jackson-Pratt drain, #10 round.

Dr. W performed the surgical procedure. Claimant testified that prior to the 2000 lumbar surgery his left leg was symptomatic, but immediately after the surgery, his right leg became symptomatic. Claimant testified that he complained to Dr. W while still hospitalized that his pain had just changed from his left leg to his right leg, that his condition had not improved, and Dr. W simply told him to wait because it would get better. According to Claimant his condition did not improve, and after the surgery, he was referred to Dr. D, who has treated him with epidural steroid injections as well as pain medications. According to medical records, Claimant has been maintained on varying opioid analgesics over the years, tried acupuncture, and had a dorsal column stimulator trial without benefit. Dr. D referred Claimant to Dr. S to determine, "what's wrong with the back from the 2000 lumbar fusion."

On February 16, 2009, Dr. S examined Claimant. Dr. S recommended a CT myelogram of the lumbar spine with flexion and extension views, to rule out pseudoarthrosis, and to assess adjacent level for the compensable injury of _____. Dr. S testified that an MRI would be totally useless in this kind of situation because:

The metal in the back would interfere with magnetic waves generated by the machine to distort the information it would be completely distorted and would not be able to make any real sense of what was happening in the areas of concern at all they wouldn't get any information about the fusion about the hardware and very likely would give no information about the discs that are right next to where all the surgery has taken place because the metal would distort the magnetic field and in the process of distorting the magnetic field the images would be very distorted and wouldn't be able to read anything from them.

Dr. S further testified and explained that he disagreed with the IRO by stating:

Because I think that the examiner focused in on whether or not there is any progressive neurological deficit as being a primary indicator for the imaging request and this just doesn't even apply to this patient. I mean he had progressive leg and back pain and the reviewer thought there was no physical exam signs in my report and I disagree with that because if you look at my report I talk about that he had decreased sensation in his right calf; that's a neurological finding; that he had a slow Trendelenburg gait – that's a neurological finding that he can't walk right; he had a very limited ability to bend forward and when he bent backward it caused him pain in his back, and that's a physical exam finding that's suspicious that a fusion may or may not be working properly plus when you just take into account the patient's history of having a fusion and he's in the right time frame of hardware really having problems at this point he probably could have had these problems for a long time and his pain management interventions don't work anymore and he's at the point where something really needs to be definitely determined to find out the etiology of these problems. So I disagree with the IRO findings because the IRO focused in on something that didn't apply to this patient. The IRO didn't look at my report carefully.

Dorland's Illustrated Medical Dictionary, 28th Edition defines Trendelenburg's symptom as a waddling gait due to paralysis of the gluteal muscles.

A February 27, 2009, utilization review determined that the proposed treatment did not meet medical necessity guidelines. The physician reviewer was Dr. G, M.D. (Physical Medicine & Rehabilitation), who found no documentation of progressive neurological deficits or other indications evidenced.

On March 23, 2009, upon reconsideration, physician reviewer, Dr. C, M.D. (Orthopaedic Surgery), denied the request saying:

The patient has a documented history of low back pain that has continued despite very aggressive treatments to include IDDS and a spinal cord stimulator trial.

There is no objective clinical evidence in the submitted records to suggest that the patient's subjective complaints have a recent onset or that physical findings are acute in nature or have significantly progressed. There is also no indication on physical exam that the patient's hardware from previous fusion is the pain generator and would warrant a CT imaging study for broken hardware or failed fusion. Additionally there is no indication in the clinical record that the patient has had a secondary injury with suspected spinal trauma. The medical necessity for the request has not been established.

On April 9, 2009, an IRO performed an independent review of the proposed/rendered care to determine if the adverse determination was appropriate. The physician reviewer was certified by the American Board of Orthopaedic Surgery. The denial was upheld. The reviewer noted there was no competent, objective and independently confirmable medical evidence presented of a verifiable radiculopathy of spinal instability or pseudoarthrosis. In the analysis the reviewer noted that the *ODG* did not recommend CT-myelogram except for indications below. It was noted that CT Myelography was OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive.

The *ODG* provides as follows:

CT & CT Myelography (computed tomography)

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).

Dorland's Illustrated Medical Dictionary 28th Edition defines myelopathy as a general term denoting functional disturbances and/or pathological changes in the spinal cord; the term is often used to designate nonspecific lesions, in contrast to inflammatory lesions (myelitis).

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 is considered a party 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."

From the evidence based medicine presented, Dr. S has effectively and persuasively testified that he documented neurological findings consistent with myelopathy. The IRO reviewer stated that after considering the *ODG* and given the lack of documentation of any real clinical data from the physician, the requirements for a myelogram with CT scan as noted by the Division mandated Official Disability Guidelines were not met. Dr. S pointed out that the *ODG* states that a CT Myelogram is "OK" if MRI is contraindicated, such as in cases of metallic foreign body, which is certainly true in Claimant's case. From the evidence presented in the instant case it is clear that an MRI would normally be ordered as the diagnostic imaging of choice for patients with prior back surgery, but the MRI would be inappropriate in this case because of the existence of the metal hardware implanted during the 2000 surgery.

In medical necessity cases, the party appealing the IRO determination has the burden of overcoming the IRO by a preponderance of the evidence-based medical evidence. In the instant case, Claimant has presented a preponderance of evidence-based medical evidence and has shown that the requested diagnostic test is health care reasonably required for the compensable injury of _____.

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 (Employer) and 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. As a result of his compensable injury, on February 22, 2000, Claimant underwent lumbar spine surgery with placement of metallic hardware.
4. Dr. S has recommended CT myelogram of the lumbar spine with flexion and extension views to rule out pseudoarthrosis, and to assess adjacent level since an MRI was contraindicated due to the metallic hardware from the 2000 lumbar surgery.
5. For treatment of the low back, the *ODG* recommends CT myelography when an MRI is unavailable, contraindicated (e.g. metallic foreign body), or inconclusive.
6. The IRO determination upheld the Carrier's denial of the requested CT myelogram because "there were no competent, objective and independently confirmable medical evidence presented of a verifiable radiculopathy of spinal instability or pseudoarthrosis, i.e., the lack of documentation of any real clinical data from the physician."
7. Dr. S's testimony that documented definitive neurological findings based upon his February 16, 2009, physical examination of the Claimant provided necessary and persuasive evidence based medicine sufficient to overcome the IRO.
8. The requested CT myelogram of the lumbar spine with flexion and extension views, is consistent with the *ODG* criteria.
9. The requested CT myelogram of the lumbar spine with flexion and extension views is 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 contrary to the decision of the IRO that CT myelogram of the lumbar spine with flexion and extension views, to rule out

pseudarthrosis, and to assess the adjacent level is health care reasonably required for the compensable injury of _____.

DECISION

Claimant is entitled to CT myelogram of the lumbar spine with flexion and extension views to rule out pseudarthrosis, and to assess the adjacent level for the compensable injury of _____.

ORDER

Carrier is 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 **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
D/B/A/ CSC - LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET #1050
AUSTIN, TEXAS 78701**

Signed this 1st day of September, 2009

Cheryl Dean
Hearing Officer