

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 November 3, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to low pressure lumbar discogram with post-CT at L3-4, with control level L4-5 (62290, 72295, 77003, 72132) for his compensable _____ injury?

PARTIES PRESENT

Petitioner/Provider, Dr. B, M.D., appeared *pro se*. Respondent/Carrier appeared and was represented by TS, attorney. The Claimant did not appear.

BACKGROUND INFORMATION

It was undisputed that the Claimant sustained a compensable lumbar injury on _____, and the evidence showed that the injury occurred when the Claimant fell approximately eight feet off of a ladder. On September 23, 2008, the Claimant was first seen by Dr. B, who noted that the Claimant had failed conservative treatment and was suffering mostly from axial low back pain (as opposed to pain due to nerve compression). Dr. B had a psychosocial screen done and determined that the Claimant did not have any barriers to have a lumbar fusion performed, but he wanted to obtain a discogram for purposes of excluding certain disc levels from a proposed fusion surgery (which surgery had not been requested as of the date of this hearing). The Carrier denied Dr. B's request for the discogram with post-CT in dispute twice and the IRO upheld the adverse determination, relying upon medical judgment/clinical experience and the *Official Disability Guidelines* (ODG).

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. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-

based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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 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."

The ODG provides the following for discography:

Not recommended. In the past, discography has been used as part of the pre-operative evaluation of patients for consideration of surgical intervention for lower back pain. However, the conclusions of recent, high quality studies on discography have significantly questioned the use of discography results as a preoperative indication for either IDET or spinal fusion. These studies have suggested that reproduction of the patient's specific back complaints on injection of one or more discs (concordance of symptoms) is of limited diagnostic value. (Pain production was found to be common in non-back pain patients, pain reproduction was found to be inaccurate in many patients with chronic back pain and abnormal psychosocial testing, and in this latter patient type, the test itself was sometimes found to produce significant symptoms in non-back pain controls more than a year after testing.) Also, the findings of discography have not been shown to consistently correlate well with the finding of a High Intensity Zone (HIZ) on MRI. Discography may be justified if the decision has already been made to do a spinal fusion, and a negative discogram could rule out the need for fusion (but a positive discogram in itself would not allow fusion). (Carragee-Spine, 2000) (Carragee2-Spine, 2000) (Carragee3-Spine, 2000) (Carragee4-Spine, 2000) (Bigos, 1999) (ACR, 2000) (Resnick, 2002) (Madan, 2002) (Carragee-Spine, 2004) (Carragee2, 2004) (Maghout-Juratli, 2006) (Pneumaticos, 2006) (Airaksinen, 2006) (Manchikanti, 2009)

The ODG does not recommend discography, and in this case the parties did not agree to perform the procedure anyway. Although Dr. B, the petitioner in this case, did present his expert opinion concerning why he felt that the claimant is entitled to a lumbar discogram, supported by medical literature, he did not offer sufficient evidence-based medicine to overcome the IRO determination. Dr. B did not establish that the preponderance of the evidence-based medical evidence is contrary to the IRO's decision in this case. For this reason, the Claimant is not entitled to a lumbar discogram with post-CT at L3-L4 with control level at L4-5 since the procedure has not been shown to be 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 _____, the Claimant was the employee of (Employer).
 - C. On _____, employer had workers' compensation insurance coverage with ACIG Insurance Co., carrier.
 - D. On _____, the Claimant sustained a compensable lumbar injury while in the course and scope of his employment with (Employer).
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. A low pressure lumbar discogram with post-CT at L3-4 with control at L4-5 (62290, 72295, 77003, 72132) is not health care reasonably required for the Claimant's 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 low pressure lumbar discogram with post-CT at L3-4 with control at L4-5 (62290, 72295, 77003, 72132) for the compensable injury of _____.

DECISION

Claimant is not entitled to a low pressure lumbar discogram with post-CT at L3-4 with control at L4-5 (62290, 72295, 77003, 72132) 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 **ACIG INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**BURNIE BURNER
515 CONGRESS AVENUE, STE. 1500
AUSTIN, TX 78701**

Signed this 12th day of November, 2009.

PATRICE FLEMING-SQUIREWELL
Hearing Officer