

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 January 11, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to an MRI of the lumbar spine, sacral plexus, pelvis, left thigh and leg for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RH, ombudsman.
Respondent/Carrier appeared and was represented by DP, attorney.

BACKGROUND INFORMATION

Claimant sustained injuries to his left knee and right elbow in a single vehicle accident when he ran off the road to keep from hitting a deer. At the time of the accident, Claimant was driving a log truck. He has undergone knee surgery, performed by his doctor, KK, MD. He developed what has been diagnosed, per Dr. K as Regional Pain Syndrome (RPS) after the surgery. Dr. K testified that RPS is the same as what was formerly known as Reflex Sympathetic Dystrophy (RSD). Dr. K referred Claimant to Dr. MK. Dr. MK suggested that Claimant have the MRIs that are the subject of this appeal and Dr. K requested preauthorization for those studies. The MRI of the lumbar spine was eventually approved by Carrier and the appeal of that procedure is moot.

The denial of the MRIs of the sacral plexus, pelvis, left thigh and leg was upheld by the physician reviewer with (IRO) appointed by the Texas Department of Insurance. The physician reviewer's analysis stated that there had been no change in Claimant's neurologic condition in almost two years and there were no Official Disability Guidelines (ODG) recommendations that would provide indications for the requested diagnostic studies. The lumbar and thoracic chapter of the ODG, in part, gives the following guidance for determining the necessity for an 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)

Indications for imaging -- Magnetic resonance imaging:

- Thoracic spine trauma: with neurological deficit
- Lumbar spine trauma: trauma, neurological deficit

- Lumbar spine trauma: seat belt (chance) fracture (If focal, radicular findings or other neurologic deficit)
- Uncomplicated low back pain, suspicion of cancer, infection, other “red flags”
- Uncomplicated low back pain, with radiculopathy, after at least 1 month conservative therapy, sooner if severe or progressive neurologic deficit. (For unequivocal evidence of radiculopathy, see AMA Guides, 5th Edition, page 382-383.) (Andersson, 2000)
- Uncomplicated low back pain, prior lumbar surgery
- Uncomplicated low back pain, cauda equina syndrome
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, painful
- Myelopathy, sudden onset
- Myelopathy, stepwise progressive
- Myelopathy, slowly progressive
- Myelopathy, infectious disease patient
- Myelopathy, oncology patient

The hip and pelvis chapter contains the following direction on MRIs:

Recommended as indicated below. MRI is both highly sensitive and specific for the detection of many abnormalities involving the hip or surrounding soft tissues and should in general be the first imaging technique employed following plain films. (American, 2003) (Chana, 2005) (Brigham, 2003) (Stevens, 2003) (Colorado, 2001) (Wild, 2002) (Verhaegen, 1999) MRI seems to be the modality of choice for the next step after plain radiographs in evaluation of select patients with an occult hip fracture in whom plain radiographs are negative and suspicion is high for occult fracture. This imaging is highly sensitive and specific for hip fracture. Even if fracture is not revealed, other pathology responsible for the patient's symptoms may be detected, which will direct treatment plans. (Cannon, 2009)

Indications for imaging -- Magnetic resonance imaging:

Osseous, articular or soft-tissue abnormalities

Osteonecrosis

Occult acute and stress fracture

Acute and chronic soft-tissue injuries

Tumors

Exceptions for MRI

Suspected osteoid osteoma (See CT)

Labral tears (use MR arthrography)

Claimant appealed the IRO decision. Division Rule 133.308 (t) states: "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."

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 foregoing 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.

Claimant testified regarding the events leading up to the request for the multiple MRIs. He acknowledged that he had a prior lumbar spine injury and had undergone the lumbar MRI. He was unable to provide any other probative evidence on whether the requested MRIs are reasonably necessary health care.

Dr. K testified on behalf of Claimant. He testified that he appealed Carrier's denial of the requested MRIs because Dr. MK had requested that the imaging studies be done and he relied on Dr. MK's expertise. He is not familiar with the ODG or other evidence based medicine regarding the medical necessity of MRIs under these circumstances. He concurred with the IRO physician reviewer that there had been no change in Claimant's neurologic condition for approximately two years. He candidly admitted that he referred Claimant to Dr. MK because the issues involved are outside his area of expertise. Claimant offered no evidence from Dr. MK to support the requested imaging studies.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See Black vs. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. *Black v. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999). Since Dr. K provided no evidence based medicine

contrary to the IRO decision, the evidence offered by Claimant failed to overcome the IRO decision.

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 sustained a compensable injury while employed by (Employer).
 - C. (IRO). was appointed by the Texas Department of Insurance to act as the Independent Review Organization in this matter.
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. An MRI of the sacral plexus, pelvis, left thigh and leg is not reasonably required medical treatment for the compensable injury of _____.
4. Carrier has approved the requested MRI of the lumbar spine and that imaging study has been performed.

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 Independent Review Organization (IRO) that Claimant is not entitled to an MRI of the sacral plexus, pelvis, left thigh and leg for the compensable injury of _____.
4. Appeal of the IRO decision regarding the request for an MRI of the lumbar spine is moot.

DECISION

Claimant is not entitled to MRIs of the sacral plexus, pelvis, left thigh and leg 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 **BITUMINOUS CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**GLENN CAMERON
222 W. LAS COLINAS BLVD, SUITE 1720
IRVING, TX 75016-7968**

Signed this 12th day of January, 2010.

KENNETH A. HUCHTON
Hearing Officer