

**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 February 18, 2010 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 cervical discogram for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was represented by MS, attorney. Petitioner/Provider Dr. B appeared on his own behalf. Respondent/Carrier appeared and was represented by JB, adjuster.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his cervical spine on \_\_\_\_\_. The claimant is currently treating with Dr. B who recommended that the claimant have a cervical discogram for pre-operative evaluation to determine which levels of the cervical spine require surgical intervention. Dr. B's request was denied twice by the carrier's utilization review agents and their denial was upheld by the Independent Review Organization (IRO).

**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. 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 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."

With regard to cervical discogram, the ODG provides as follows:

Not recommended. Conflicting evidence exists in this area, though some recent studies condemn its use as a preoperative indication for IDET or Fusion, and indicate that discography may produce symptoms in control groups more than a year later, especially in those with emotional and chronic pain problems. (Carragee, 2000) (Carragee2, 2000) (Bigos, 1999) (Grubb, 2000) (Zeidman, 1995) (Manchikanti, 2009) Cervical discography has been used to assist in determining the specific level or levels causing the neck pain and, potentially, which levels to fuse; however, controversy regarding the specificity of cervical discograms has also been debated and more research is needed. (Wieser, 2007) Assessment tools such as discography lack validity and utility. (Haldeman, 2008) Although discography, especially combined with CT scanning, may be more accurate than other radiologic studies in detecting degenerative disc disease, its ability to improve surgical outcomes has yet to be proven. It is routinely used before IDET, yet only occasionally used before spinal fusion. (Cohen, 2005) Discography is Not Recommended in ODG. See also the Low Back Chapter.

Patient selection criteria for Discography if provider & payor agree to perform anyway:

- o Neck pain of 3 or more months
- o Failure of recommended conservative treatment
- o An MRI demonstrating one or more degenerated discs as well as one or more normal appearing discs to allow for an internal control injection (injection of a normal disc to validate the procedure by a lack of a pain response to that injection)
- o Satisfactory results from psychosocial assessment (discography in subjects with emotional & chronic pain has been associated with reports of significant prolonged back pain after injection, and thus should be avoided)
- o Should be considered a candidate for surgery
- o Should be briefed on potential risks and benefits both from discography and from surgery
- o Due to high rates of positive discogram after surgery for disc herniation, this should be potential reason for non-certification

The ODG does not recommend discography and in the present case the parties did not agree to perform the procedure. Although Dr. B did provide his expert opinion concerning why he felt that the claimant is entitled to a cervical discogram and provided evidence-based medical evidence to support his opinion, upon careful review of the literature, the cited articles are equivocal regarding the ability of cervical discography to improve surgical outcomes. Dr. B did not offer sufficient evidence-based medicine to overcome the IRO determination.

Dr. B failed to 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 cervical discogram 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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction in this matter.
  - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - C. On \_\_\_\_\_, claimant was the employee of (Employer).
  - D. Claimant sustained a compensable injury on \_\_\_\_\_.
  - E. The Independent Review Organization determined that the claimant should not have a cervical discogram.
2. Carrier delivered to claimant and provider 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 cervical discogram is not 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 not contrary to the decision of the IRO that a cervical discogram is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to a cervical discogram 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 **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
701 BRAZOS SUITE 1050  
AUSTIN, TX 78701-3232**

Signed this 23<sup>rd</sup> day of March, 2010.

Katherine D'Aunno-Buchanan  
Hearing Officer