

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 March 23, 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 the Claimant is not entitled to a lumbar discogram at L3-L5 and a post discogram CT for the compensable injury of _____?

PARTIES PRESENT

Petitioner, (Healthcare Provider), appeared by and through Dr. B. Claimant appeared and was assisted by LL, ombudsman. Respondent/Carrier appeared and was represented by JL, attorney.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury on _____. The injury included the lumbar spine. The Claimant was referred to Dr. B, M.D., for a neurosurgical consultation.

Carrier's utilization review determined that the lumbar discogram did not meet the criteria of the Official Disability Guidelines (ODG) concerning a lumbar discography, and was not medically necessary for Claimant's compensable injury of _____. Carrier's utilization review denied Dr. B's request. Dr. B requested an IRO review. On August 19, 2009, the IRO reviewer, a board certified orthopedic surgeon, rendered a decision, determined that the lumbar discogram L3-5 and post discogram CT were not medically necessary, and cited the current edition of the Official Disability Guidelines (ODG) concerning a lumbar discography. The IRO reviewer further determined that Claimant's medical records did not document any evidence of an ongoing radiculopathy, and there was no evidence of any instability on the range of motion studies performed on Claimant's low back.

Texas Labor Code §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 (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 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, the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence based medicine evidence."

With regard to the low back, under Discography, the ODG identifies numerous medical articles and studies by various authors conducted from 1997 through 2009, and provides that discography is not recommended. If discography is not recommended there is no need for a post discogram CT. The ODG cites patient selection criteria for discography if the provider and the payor agree to perform anyway.

The ODG clearly states that lumbar discography is not a recommended procedure, and may only be justified if the decision has been made for the patient to undergo lumbar spinal fusion surgery. At the time the Dr. B requested the lumbar discography he had not made a recommendation that Claimant undergo lumbar spinal fusion surgery. In addition, Dr. B had determined that he would utilize the lumbar discogram to perform multiple level testing as opposed to single level testing with control. Dr. B offered articles (Pain Imaging: Discography by Kirk Schellhas (undated), Possible Pathogenesis of Painful Intervertebral Disc Degeneration by Peng (2006), Baogan et. al, and Provocation Discography As a Guide to Planning Operations on the Spine by E.Calhoun(1988) et. al which were overcome by the utilization review reports, evidence based medical journal articles, lack of explanation of the veracity of the studies or articles, and other evidence in the case.

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).
 - C. Claimant sustained a compensable injury on _____.
 - D. The IRO determined that the lumbar discogram at L3-5 and the post discogram CT were not medically necessary treatment for Claimant's compensable injury of _____.

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. Dr. B, M.D., recommended that Claimant undergo a lumbar discogram at L3-5 and post discogram CT for the compensable injury of _____.
4. The IRO utilized the current edition of the ODG, and determined that the lumbar discography at L3-5 and post discogram CT were not medically necessary treatment for Claimant's compensable injury of _____.
5. Evidence-based medical evidence offered by the Petitioner was not persuasive and the preponderance of the evidence based medical evidence was not contrary to the IRO's decision.
6. Dr. B failed to provide an expert medical opinion regarding the impact of the offered articles on the issue at bar.
7. The requested lumbar discography at L3-5 and post discogram CT are not health care reasonably required for 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 the Claimant is not entitled to a lumbar discogram at L3-5 and post discogram CT for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar discogram at L3-5 and post discogram CT 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 of _____, in accordance with Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 24th day of March, 2010.

Susan Meek
Hearing Officer