

**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 April 28, 2011 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 an MRI of the lumbar spine without contrast for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by MH, ombudsman.  
Respondent/Carrier appeared and was represented by TS, attorney.

**BACKGROUND INFORMATION**

The Claimant sustained a compensable injury to his left shoulder and lumbar spine on \_\_\_\_\_. Claimant was initially diagnosed with a lumbar strain and treated for his left shoulder injury which required a surgical repair performed in January 2010. The medical records indicate that the Claimant's low back symptoms had resolved as of October 2009. In May 2010, Claimant returned to his treating doctor with complaints of low back pain. The Claimant's treating doctor has recommended that the Claimant undergo an MRI of the lumbar spine without contrast. The request for a lumbar MRI was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, identified as an orthopedic surgeon, determined that an MRI of the lumbar spine is not reasonable or necessary. The IRO noted that the Claimant's lower back symptoms had resolved as of October 28, 2009 when the Claimant was examined by the designated doctor. The IRO reviewer stated that the Claimant's complaints seven months after the designated doctor evaluation do not appear to be related and that, per the Official Disability Guidelines (ODG), there were no findings which would meet the need for an MRI of the lumbar spine.

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 making decisions about the care of individual patients. 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."

Pursuant to the ODG recommendations, MRI's are the test of choice for patients with prior back surgery; however, repeat MRI's are indicated only if there has been progression of neurologic deficit. MRI's have also become the mainstay in the evaluation of myelopathy.

**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 Claimant testified that he has had low back pain since the date of injury but he was more concerned about treating his left shoulder. Claimant testified that he has radiating pain into his thigh/groin area and that the physical therapy he received to his lumbar spine in 2008 did not

relieve his symptoms. In a letter dated March 23, 2011, Dr. L, Claimant's treating doctor, stated that he was not really concerned about the Claimant's low back symptoms because of the complications with the left shoulder and that it was not until the Claimant had increasing back pain in May 2010 after returning to work that an MRI scan was recommended. Dr. L noted that the Claimant began to have some radiation of pain to the left groin and medial thigh in December 2010. Dr. L failed to address the concerns raised by the URA doctors and the IRO reviewer and he did not address the recommendations in the ODG for an MRI scan; specifically, that the Claimant had no obvious red flag, no documentation in the record of neurological deficit and no record of an abnormal x-ray. Dr. L offered his opinion that an MRI needed to be performed to identify the extent of the Claimant's lumbar spine injury; however, he failed to offer an opinion supported by evidence-based medicine to justify his recommendation for a lumbar spine MRI. Based on the evidence presented, Claimant failed to provide an evidence-based medical opinion sufficient to contradict the determination of the IRO and the preponderance of the evidence is not contrary to the decision of the IRO.

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 (Self-Insured) when he 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. The treating doctor requested the Claimant undergo an MRI of the lumbar spine without contrast for the compensable injury of \_\_\_\_\_.
4. Claimant does not meet the requirements of the ODG for a lumbar MRI and he failed to present other evidence based medicine sufficient to overcome the determination of the IRO.
5. The MRI of the lumbar spine without contrast 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-based medical evidence is not contrary to the decision of the IRO that an MRI of the lumbar spine without contrast is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to an MRI of the lumbar spine without contrast 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**EB  
(SELF-INSURED)  
(STREET ADDRESS)  
(CITY), TX (ZIP CODE)**

Signed this 2<sup>nd</sup> day of May, 2011.

Carol A. Fougerat  
Hearing Officer