

MEDICAL CONTESTED CASE HEARING NO 12056  
M6-11-34639-01

**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 December 6, 2011, 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 repeat MRI of the lumbar spine for the compensable injury of (Date of Injury)

**PARTIES PRESENT**

The petitioner/claimant appeared and was assisted by PSG, ombudsman. The respondent/carrier appeared and was represented by GG, attorney.

**BACKGROUND INFORMATION**

Claimant was an elevator repairman for the named employer when he sustained a compensable injury on (Date of Injury). Claimant was stopped at a stop light on his way to a job when he was rear-ended by a person in a large SUV. He was taken to the hospital, where he was treated for low back pain. This pain increased the next day; he also experienced soreness in his shoulders and neck. Claimant saw Dr. SS, orthopaedic surgeon, beginning late June, 2010. At the time, Dr. S did not feel claimant was a surgical candidate. Dr. S treated claimant conservatively and so referred him to Dr. AJ for pain management. Claimant returned to Dr. S and is now considering lumbar surgery.

A repeat MRI of the lumbar spine was requested by Dr. S and denied by the carrier. Utilization Review upheld the denial and the claimant requested a review by an Independent Review Organization. The Independent Review Organization (IRO), Envoy Medical Systems, LP, upheld the carrier's denial of the repeat lumbar MRI. According to the IRO report, the IRO reviewer was a board certified neurosurgeon. The reviewer indicated that there had been no change in the patient's symptoms or on his examination since the previous MRI. The previous MRI did not suggest any reason for fusion or any other lumbar spine operation; therefore, more testing should be pursued before a major fusion procedure is done." The reviewer further noted that claimant needed "flexion and extension views to determine any instability, and may possibly need CT myelography to see if there is more evidence of nerve pressure than is seen on the MRI."

## 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.

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 133.208 (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."

On the date of this medical contested case hearing, the ODG provides the following with regard to Repeat MRI:

Repeat MRI is not routinely recommended, and should be reserved for a significant change in symptoms and/or findings suggestive of significant pathology (eg, tumor, infection, fracture, neurocompression, recurrent disc herniation).

At the CCH, claimant provided no evidence-based medicine in support of his claim. Based on the evidence presented, the claimant failed to meet his burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence and, therefore, the claimant is not entitled to a repeat MRI of the lumbar spine for the compensable injury of (Date of Injury).

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) Office of the Workers' Compensation Division of the Texas Department of Insurance.
  - B. On (Date of Injury), claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), claimant sustained a compensable injury.
  - D. On (Date of Injury), employer provided workers' compensation insurance to its employees through Illinois National Insurance Company.
2. The carrier delivered to the claimant a single document stating the true corporate name of the carrier, and the name and street address of the carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Envoy Medical Systems was appointed to act as Independent Review Organization by the Texas Department of Insurance.
4. The IRO determined that the claimant was not entitled to a repeat MRI of the lumbar spine for the compensable injury of (Date of Injury).
5. A repeat MRI of the lumbar spine is not health care reasonably required for the compensable injury of (Date of Injury).

## **CONCLUSIONS OF LAW**

1. The Workers' Compensation Division of the Texas Department of Insurance has jurisdiction to hear this case.
2. Venue is proper in the (City) Office.
3. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to a repeat MRI of the lumbar spine.

## **DECISION**

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to a repeat MRI of the lumbar spine.

**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 **ILLINOIS NATIONAL 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, TX 78701-3232**

Signed this 20th day of December, 2011.

Carolyn Cheu-Mobley  
Hearing Officer