

MEDICAL CONTESTED CASE HEARING NO. 12137  
M6-12-40724-01

**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 September 12, 2012 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to an EMG of the bilateral upper extremities for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by MH, ombudsman.

Respondent/Carrier appeared and was represented by BJ, attorney.

**BACKGROUND INFORMATION**

The Claimant's treating doctor, JS, requested that the Claimant undergo a repeat electromyography (EMG) of the bilateral upper extremities to determine if the Claimant's complaints of pain involve another level of the cervical spine. The Claimant had previously undergone EMG testing of the upper extremities on April 20, 2009, which revealed moderate acute left C7-8 radiculopathy. She also underwent MRIs of the cervical spine on July 8, 2008 and again on January 14, 2011. Dr. S's initial request was denied due to non-submission of the previous EMG, non-documentation of worsening or progression of the Claimant's condition and failure of conservative treatment. Upon re-submission of his request, Dr. S provided the requested previous EMG results. Dr. S's request was reviewed for reconsideration and again denied based upon no additional documentation provided with regard to the Claimant's changing symptoms, lack of details on the Claimant's response to conservative treatment and there was no indication of possible metabolic pathology or peripheral compression to support utilization of the requested EMG studies. The IRO subsequently reviewed Dr. S's request and denied the request citing that there was no indication that repeat EMG studies would advance the diagnosis or alter the treatment plan and reiterated the reasoning cited by the utilization review agent upon reconsideration.

## 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 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 (sic) 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 electromyography (EMG), the ODG recommends as follows:

Recommended (needle, not surface) as an option in selected cases. The American Association of Electrodiagnostic Medicine conducted a review on electrodiagnosis in relation to cervical radiculopathy and concluded that the test was moderately sensitive (50%-71%) and highly specific (65%-85%). (AAEM, 1999) EMG findings may not be predictive of surgical outcome in cervical surgery, and patients may still benefit from surgery even in the absence of EMG

findings of nerve root impingement. This is in stark contrast to the lumbar spine where EMG findings have been shown to be highly correlative with symptoms.

***Positive diagnosis of radiculopathy:*** Requires the identification of neurogenic abnormalities in two or more muscles that share the same nerve root innervation but differ in their peripheral nerve supply.

***Timing:*** Timing is important as nerve root compression will reflect as positive if active changes are occurring. Changes of denervation develop within the first to third week after compression (fibrillations and positive sharp waves develop first in the paraspinals at 7-10 days and in the limb muscles at 2-3 weeks), and reinnervation is found at about 3-6 months

***Acute findings:*** Identification of fibrillation potentials in denervated muscles with normal motor unit action potentials (usually within 6 months of symptoms: may disappear within 6 weeks in the paraspinals and persist for up to 1-2 years in distal limbs).

***Chronic findings:*** Findings of motor unit action potentials with increased duration and phases that represent reinnervation. With time these become broad, large and polyphasic and may persist for years.

***Anatomy:*** The test primarily evaluates ventral (anterior) root function (motor) and may be negative if there is dorsal root compression (sensory) only. Only C4-8 and T1 in the neck region have limb representation that can be tested electrodiagnostically. The anatomic basis for this lies in the fact that the cervical nerve roots have a motor and a sensory component. It is possible to impinge the sensory component with a herniated disc or bone spur and not affect the motor component. As a result, the patient may report radicular pain that correlates to the MRI without having EMG evidence of motor loss.

***Paraspinal fibrillation potentials:*** May be seen in normal individuals and are nonspecific for etiology. The presence of these alone is insufficient to make a diagnosis of radiculopathy and they may be absent when there is a diagnosis of radiculopathy secondary to sampling error, timing, or because they were spared. They may support a diagnosis of radiculopathy when corresponding abnormalities are present in the limb muscles.

***Indications when particularly helpful:*** EMG may be helpful for patients with double crush phenomenon, in particular, when there is evidence of possible metabolic pathology such as neuropathy secondary to diabetes or thyroid disease, or evidence of peripheral compression such as carpal tunnel syndrome.

***H-reflex:*** Technically difficult to perform in the upper extremity but can be derived from the median nerve. The test is not specific for etiology and may be difficult to obtain in obese patients or those older than 60 years of age.

(Negrin, 1991) (Alrawi, 2006) (Ashkan, 2002) (Nardin, 1999) (Tsao, 2007) See Discectomy-laminectomy-laminoplasty. (Surface EMG and F-wave tests are not very specific and therefore are not recommended. For more information on surface EMG, see the Low Back Chapter.)

While cervical electrodiagnostic studies are not necessary to demonstrate a cervical radiculopathy, they have been suggested to confirm a brachial plexus abnormality or some problem other than a cervical radiculopathy, but these studies can result in unnecessary over treatment. (Plastaras, 2011) (Lo, 2011) (Fuglsang-Frederiksen, 2011)

The Claimant did not present a medical opinion, either written or oral, in support of the request for the repeat EMG. The Carrier, on the other hand, presented the oral testimony of Dr. NT in support of its contention that the Claimant failed to meet the necessary criteria listed in the ODG for a repeat EMG study. Dr. T testified regarding the criteria enumerated in the ODG and how the Claimant had failed to meet the necessary criterion for his request. His testimony encompassed most of the reasoning cited by the utilization review agents and the IRO. The Claimant has failed to establish by a preponderance of the evidence-based medical evidence that the requested procedure is health care reasonably required for his 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) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. The IRO determined that the Claimant is not entitled to the requested service for the compensable injury of (Date of Injury).
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. The Claimant did not establish by a preponderance of the evidence-based medical evidence that the requested procedure is health care reasonably required for his compensable injury of (Date of Injury).
4. An EMG of the bilateral upper extremities is not health care reasonably required for the compensable injury of (Date of Injury).

### **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 an EMG of the bilateral upper extremities is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to an EMG of the bilateral upper extremities for the compensable injury of (Date of Injury).

### **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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON O. WRIGHT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723**

Signed this 13th day of September, 2012.

Virginia Rodriguez Gomez  
Hearing Officer