

MEDICAL CONTESTED CASE HEARING NO. 14026

**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.

**ISSUE**

A contested case hearing was scheduled for November 4, 2013 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 injection procedure for cervical discography and CT scan of the cervical spine for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by LB, ombudsman.  
Respondent/Carrier appeared and was represented by RJ, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on (Date of Injury) when he was struck by an 800 pound lift that fell onto his right shoulder and neck causing an injury to his upper back. Claimant underwent cervical surgery on August 18, 2008. Claimant's treating doctor, Dr. E, has requested an injection procedure for cervical discography and CT scan of the cervical spine. Carrier denied this request and Claimant sought review by an IRO. The IRO reviewer, identified as a board certified orthopedic surgeon, upheld the Carrier's denial. The IRO reviewer noted that discography is unreliable in patients with chronic pain problems and that the medical documentation included no mention of psychological evaluation or physical findings of radiculopathy.

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(s), "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."

#### **ODG Recommendation for discography:**

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.**

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

- Neck pain of 3 or more months

- Failure of recommended conservative treatment
- 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)
- 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)
- Should be considered a candidate for surgery
- Should be briefed on potential risks and benefits both from discography and from surgery
- Due to high rates of positive discogram after surgery for disc herniation, this should be potential reason for non-certification

Dr. E, orthopedic surgeon, testified that Claimant suffers from “adjacent segment disease” as a result of forcible manipulation performed by the designated doctor which cased disc pathology above and below the plate in the cervical spine. Dr. E testified that a cervical discogram is necessary to identify the pain generator. Dr. E acknowledged that the proposed procedure is not consistent with the recommendations in the ODG but he testified that it is the appropriate “standard of care” for this patient. Dr. E testified that provocation discography is used to identify the pain generator and he referred to this being the accepted standard by the American Academy of Orthopedic Surgeons and the North American Spine Society. Dr. E did not cite any specific evidence-based medical literature or studies nor did he address the concerns raised by the IRO.

Based on the evidence presented, the ODG does not recommend discography and Claimant failed to provide an evidence-based medicine medical opinion sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to an injection procedure for cervical discography and CT scan of the cervical 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) 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. Claimant sustained a compensable injury on (Date of Injury).
  - D. The IRO determined that the proposed injection procedure for cervical discography and CT scan of the cervical spine is not medically necessary for the compensable injury of (Date of 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. Claimant does not meet the recommendations of the ODG for injection procedure for cervical discography and CT scan of the cervical spine and he failed to present other evidence-based medicine supporting the necessity for this procedure.
  4. Injection procedure for cervical discography and CT scan of the cervical spine 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 injection procedure for cervical discography and CT scan of the cervical spine is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to an injection procedure for cervical discography and CT scan of the cervical spine 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 **EMPLOYERS INSURANCE COMPANY OF WAUSAU** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TX 78701**

Signed this 4<sup>th</sup> day of November, 2013.

Carol A. Fougerat  
Hearing Officer