

MEDICAL CONTESTED CASE HEARING NO. 14065

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that the preponderance of the evidence is not contrary to the Independent Review Organization (IRO) decision that Claimant is not entitled to a C7-T1 discogram with post CT scan for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On April 24, 2014, Britt Clark, a Division hearing officer, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Independent Review Organization (IRO) decision that Claimant is not entitled to a C7-T1 discogram with post CT scan?

The record was left open subsequent to the April 24, 2014 contested case hearing because Claimant's testifying expert, Dr. AM, was unable to testify during the allocated time due to performing a surgical procedure. At the hearing, Claimant indicated he believed that Dr. M was available to testify during this time. The Hearing Officer granted a request by Claimant to leave the record open to obtain written correspondence from Dr. M regarding the disputed issue. On May 5, 2014, Claimant obtained a letter from Dr. M and provided it to the Carrier and the Hearing Officer as C-14. After considering the responses to C-14, the record closed on May 12, 2014.

PARTIES PRESENT

Claimant appeared and was assisted by JF, ombudsman. Carrier appeared and was represented by WS, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2.

Claimant's Exhibits C-1 through C-14.

Carrier's Exhibits CR-A through CR-D.

DISCUSSION

Claimant contended that the preponderance of the evidence was contrary to the opinion of the Independent Review Organization (IRO) decision that he was not entitled to a C7-T1 discogram with post-CT scan and relied on a letter from Dr. AM, his treating doctor. Carrier argued that Dr. M's opinion offers no evidence-based medicine to overcome the IRO decision, which is based on the Official Disability Guidelines (ODG).

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 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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to a discogram:

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. See also the Low Back Chapter.

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

- o Neck pain of 3 or more months
- o Failure of recommended conservative treatment
- o 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)
- o 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)
- o Should be considered a candidate for surgery
- o Should be briefed on potential risks and benefits both from discography and from surgery

o Due to high rates of positive discogram after surgery for disc herniation, this should be potential reason for non-certification

Dr. M has responded to the IRO decision stating that the Claimant's surgeon the requested discogram is necessary to determine if Claimant requires a fusion. Dr. M has not provided evidence-based medicine to counter that cited from the ODG by the IRO in the reviewer's determination not to recommend the procedure. As Claimant did not overcome the IRO decision by a preponderance of the evidence-based medical evidence, he has accordingly failed to meet his burden of proof.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - D. On (Date of Injury), Employer provided workers' compensation insurance through Electric Insurance Company, Carrier.
 - E. On (Date of Injury), Claimant 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. A C7-T1 discogram with post CT scan 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 evidence is not contrary to the IRO decision that Claimant is not entitled to a C7-T1 discogram with post CT scan for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a C7-T1 discogram with post CT scan for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

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

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TX 75201-3136**

Signed this 15th day of May, 2014.

BRITT CLARK
Hearing Officer