MEDICAL CONTESTED CASE HEARING NO. 15026

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 bilateral upper extremity EMG/NCS for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On February 11, 2015, 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 bilateral upper extremity EMG/NCS for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by LP, ombudsman. Carrier appeared and was represented by MS, 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-5.

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

DISCUSSION

Claimant contended that the preponderance of the evidence was contrary to the opinion of the Independent Review Organization (IRO) decision that she was not entitled to a bilateral upper extremity EMG/NCS and relied on the medical evidence from the Texas Back Institute, the

proponent of the diagnostic testing provided. Carrier argued that Claimant offered 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 ODG provides the following with regard to bilateral upper extremity EMG:

> 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 reinervation is found at about 3-6 months. Acute findings: Identification of fibrillation potentials in dennervated 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 ODG provides the following with regard to upper extremity nerve conduction studies (NCS):

> Not recommended to demonstrate radiculopathy if radiculopathy has already been clearly identified by EMG and obvious clinical signs, but recommended if the EMG is not clearly radiculopathy or clearly negative, or to differentiate radiculopathy from other neuropathies or non-neuropathic processes if other diagnoses may be likely based on the clinical exam. There is minimal justification for performing nerve conduction studies when a patient is already presumed to have symptoms on the basis of radiculopathy. (Utah, 2006) (Lin, 2013) While cervical electrodiagnostic studies are not necessary to demonstrate a cervical radiculopathy, they have been suggested to confirm a brachial plexus abnormality, diabetic neuropathy, or some problem other than a cervical radiculopathy, with caution that these studies can result in unnecessary over treatment. (Emad, 2010) (Plastaras, 2011) (Lo, 2011) (Fuglsang-Frederiksen, 2011) See also the Shoulder Chapter, where nerve conduction studies are recommended for the diagnosis of TOS (thoracic outlet syndrome). Also see the Carpal Tunnel Syndrome Chapter for more details on NCS. Studies have not shown portable nerve conduction devices to be effective.

The IRO reviewer agreed with two utilization review doctors and opined that the requested treatment did not meet ODG criteria. The IRO reviewer indicated that the Claimant did not submit evidence of severe or progressive neurologic findings to warrant requested testing. Claimant offered a report from JK, a physician's assistant from the Texas Back Institute, who indicated that Claimant would benefit from undergoing bilateral upper extremity EMGs. There was no citation to evidence-based medical studies or the ODG when recommending this procedure, nor does the physical examination performed rebut the rationale that the IRO reviewer provided. Claimant has the burden of proof on this case to show by the preponderance of evidence-based medical evidence that the disputed procedure is health care that is clinically appropriate and considered effective for her injury. Evidence-based medical evidence entails the opinion of a qualified expert that is supported by evidence-based medicine. Claimant should note that this case did not involve her credibility as the Hearing Officer found her description of pain and her recitation of her treatment history credible. However, lay testimony is not probative to the medical issue at the hearing. The evidence presented at the hearing simply cannot be construed to constitute evidence-based medical evidence sufficient to overcome the decision of the IRO reviewer. As Claimant did not overcome the IRO decision by a preponderance of the evidence-based medical evidence, she has accordingly failed to meet her 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. 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. On (Date of Injury), Employer provided workers' compensation insurance through Fairmont Insurance Company, Carrier.

   D. 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 bilateral upper extremity EMG/NCS 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 Independent Review Organization (IRO) decision that Claimant is not entitled to bilateral upper extremity EMG/NCS for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to bilateral upper extremity EMG/NCS 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 **FAIRMONT 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 17th day of February, 2015.

BRITT CLARK
Hearing Officer