
Petitioner

V.

LIBERTY MUTUAL FIRE INSURANCE ,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

___ the Claimant, sought preauthorization for a cervical spine discogram. Liberty Mutual Fire Insurance (Carrier) denied the request for preauthorization, and an Independent Review Organization (IRO) determined the requested treatment was not medically necessary. The Administrative Law Judge (ALJ) agrees with the IRO and concludes that preauthorization for a discogram should be denied.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Neither party contested notice or jurisdiction, and those matters are addressed only in the Findings of Fact and Conclusions of Law. The hearing convened on October 17, 2005, at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Assisted by Ombudsman Anthony Walker, Claimant represented himself. Carrier was represented by attorney Kevin Franta. The hearing concluded the same day and the record closed.

II. DISCUSSION

A. Introduction and Background

On___, Claimant sustained a compensable injury when he slipped on ice and fell, causing injury to his cervical spine and bilateral shoulders. Following are highlights of Claimant's treatment since that time:

- 11-27-00: Initial treatment through Concentra Pain Centers consisted of conservative measures; pain killers; and a referral to Charles S. Pipkin, M.D., an orthopedic surgeon
- 12-13-00: MRI of right shoulder revealed acromioclavicular joint arthritis tendonitis; received left shoulder intra-articular cortisone injection; began physical therapy
- 02-02-01: MRI of thoracic spine revealed spondylitic changes

- 04-17-01: MRI of cervical spine revealed disc protrusion at C5-6 levels with moderate spinal stenosis and moderate cord compression; referred to Dr. Michael Murphy for pain management and epidural steroid injections
- 05-29-01: First cervical epidural steroid injection with myofascial trigger point injections
- 07-17-01: Second cervical epidural steroid injection with myofascial trigger point injections
- 07-31-01: Third cervical epidural steroid injection with myofascial trigger point injections
- 03-09-02: MRI of thoracic spine
- 06-06-02: First surgery: Claimant changed physicians and saw Dr. Frank Garcia, who performed a right shoulder rotator cuff repair followed by physical therapy
- 09-16-02: Second surgery: A cervical discectomy and fusion at C5-6 and C6-7 followed by physical therapy
- 03-25-03: Repeat MRI revealed evidence of post-operative changes at C5-6 with a narrow left sided central canal and slight cord deformation
- 05-13-03: Claimant reached Maximum Medical Improvement with a 17% whole person impairment rating
- 02-23-04: Third surgery: Left shoulder arthroscopic acromioplasty with distal clavicular resection
- 09-24-04: MRI of cervical spine revealed evidence of a bony prominence at C5-6 and C6-7 but no evidence of disc protrusion, spinal stenosis, or foraminal stenosis
- 08-05-05: Repeat MRI revealed disc protrusion at L5-S1

Claimant continues to complain of headaches, pain in the middle of his back, pain in his buttocks, left knee, left arm and hand, left foot, and between the shoulder blades. He also experiences pain radiating into the left posterior thigh and has constant numbness in the face and head. On December 15, 2004, Dr. Frank Garcia requested preauthorization for Claimant to receive a discogram above and below the fusion. Dr. Garcia again requested preauthorization on February 16, 2005. On February 24, 2005, Carrier denied preauthorization for a discogram, and in a May 6, 2005 decision, the IRO reviewer agreed with Carrier. On May 10, 2005, Claimant requested a hearing before SOAH to challenge the decision.

B. Claimant's Position, Testimony, and Arguments

Claimant maintains that he continues to be in pain and that a discogram is medically necessary to determine exactly the source of the pain and what treatment is needed for his cervical spine. Claimant testified on his own behalf with ombudsman assistance. He presented reports from Frank J. Garcia, M.D. and Patrick W. Mulroy, M.D. which were admitted into evidence.

According to Dr. Garcia, a discogram is absolutely essential to try and “understand the possibility of the origin of the pain and hence render appropriate treatment . . .,”¹ Claimant argues that he has had no tests on his neck since his surgeries. He takes Hydrocone for his pain because his neck is stiff and he says that he can hardly hold up his head by the middle of the afternoon. He wants to have the discogram so that he can possibly find out what is causing the pain and do something about it. Claimant asserts that a discogram could be used to determine a treatment other than surgery, and that Dr. Garcia believes that he can use the results from the discogram to either rule out surgery or to suggest some other form of treatment.

C. Carrier's Position, Testimony, and Arguments

Carrier's position is that a discogram is indicated only when there are neurological changes noted or if revision surgery is being considered. Because neither of these conditions exists for Claimant, a discogram is not medically necessary.

Carrier presented Claimant's medical records which were admitted into evidence. Carrier's expert witness, board-certified orthopedic surgeon Dr. Bernie McCaskill, testified by telephone on behalf of Carrier.

Dr. McCaskill explained that the purpose of a discogram, which is a preoperative diagnostic tool, involves inserting a needle into a disc, injecting dye, and taking pictures to determine the origin of pain. The procedure is generally performed when a spinal fusion is being contemplated. A discogram is indicated when one disc is abnormal and the rest are normal; when all other forms of treatment have been tried; and when the patient is in enough pain that spinal fusion is the last resort.

¹ Pet. Ex. 1.

Spinal fusions work best when there are neurological indications or nerve compression or damage, as opposed to sprain or strain.

Claimant has already had a two-level fusion and he is still in pain; any more fusions would predictably have a poor result.

Dr. McCaskill notes that in Dr. Patrick W. Mulroy's examination of Claimant on January 14, 2005, Dr. Mulroy recommends no further testing or surgery. Dr. Mulroy examined Claimant previously on December 9, 2002 and May 28, 2004. Dr. McCaskill agrees that further treatment for Claimant should involve only the management of his chronic pain through medications. No additional testing or additional surgeries would realistically help Claimant.

D. ALJ's Analysis

Claimant has been under the care of a number of doctors since the date of his injury which occurred almost five years ago. He has had steroid injections to his shoulder and his back, and he has had three surgeriesBone a cervical fusion. He has been to physical therapy, and he has been prescribed various pain medications to treat his ongoing pain. In addition, he has undergone numerous tests. Dr. McCaskill was persuasive that a discogram is a diagnostic tool used to determine the source of neurological pain which is to be corrected with spinal fusion; it is not indicated for Claimant who has already had a two-level fusion. The ALJ agrees with Carrier that a discogram is not medically necessary; that further surgery is unlikely to be of any help in relieving Claimant's pain; and that Claimant's treatment at this time should consist of pain management.

Claimant bore the burden of proof in this case, and the evidence did not support the preauthorization request more persuasively than the evidence and opinions against discography. Therefore, the ALJ denies the request.

III. FINDINGS OF FACT

1. ___ (Claimant) sustained an injury to his cervical spine and bilateral shoulders on ___, when he slipped on ice and fell.
2. At the time of Claimant's injury, Liberty Mutual Fire Insurance (Carrier) was the workers' compensation insurer for Claimant's employer.

3. Claimant has had three surgeries: a right shoulder rotator cuff repair; a cervical discectomy and fusion at C5-6 and C6-7; and a left shoulder arthroscopic acromioplasty with distal clavicular resection.
4. Claimant has complex, chronic pain syndrome but no evidence of disc protrusion, spinal stenosis, or foraminal stenosis.
5. Claimant sought preauthorization for a cervical discogram above and below the fusion levels.
6. Carrier denied the preauthorization request, concluding the requested procedure was not medically necessary.
7. Claimant then requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division, which referred the matter to an Independent Review Organization (IRO).
8. By decision dated May 6, 2005, the IRO reviewer determined the discography was not medically necessary.
9. On May 10, 2005, Claimant requested a hearing on the IRO's decision, and the case was referred to the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent to all parties on June 6, 2005. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. The hearing convened on October 17, 2005, at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Both parties were represented. The hearing concluded the same day, and record closed on October 17, 2005.
12. A discogram is a preoperative diagnostic tool used to determine the origin of pain for a condition which is ultimately treated by a spinal fusion.
13. A spinal fusion works best when there are neurological indications or nerve compression or damage.
14. Claimant has had three surgeries Bone a spinal fusion at the C5-6 and C6-7 levels.
15. Claimant's three prior surgeries have given him no lasting relief; Claimant continues to suffer from chronic pain.
16. Claimant has no neurological indications or nerve compression or damage, and there is no evidence that Claimant is a surgical candidate for a revision of his fusion or an extension of his fusion.
17. A discogram to determine the source of Claimant's pain is not medically necessary since another spinal fusion is not medically warranted for this Claimant.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to §413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Claimant had the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
5. Claimant failed to prove, by a preponderance of the evidence, that the requested discogram is a medically necessary treatment of his compensable injury.
6. Claimant's request for preauthorization should be denied. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.

ORDER

IT IS, THEREFORE, ORDERED that Claimant's preauthorization request for a cervical discogram is denied.

SIGNED November 1, 2005.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**