

**DOCKET NO. 453-05-9316.M2
MDR NO. M2-05-1866-01**

___,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	
	§	OF
EAST TEXAS EDUCATIONAL INSURANCE ASSOCIATION,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

___ (Claimant), through his doctor, sought pre-authorization for a thoracic discogram with CT scan. The East Texas Educational Insurance Association (Carrier) determined that the procedure was unnecessary and denied the request for pre-authorization. A reviewer with an Independent Review Organization (IRO) agreed with the Carrier, and as a result, Claimant is now seeking an appeal in this matter. The Administrative Law Judge (ALJ) concludes that the requested procedure is reasonable and necessary and should be pre-authorized.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On or about ___, Claimant suffered a work-related injury to his back while lifting a piece of lumber in the cabinet shop where he worked for the ___. Claimant continued to work even though he immediately began to experience tenderness in his mid- back region. When the pain failed to get better, but in fact worsened, Claimant sought treatment from Shawn Stussy, M.D. through Terry Knighton, F.N.P. Claimant was diagnosed with a thoracic strain and treated with prednisone, muscle relaxers, pain medication, and physical therapy. When medication and therapy failed to provide relief, an MRI was requested and revealed a mild disc bulge at T7- 8. Claimant was referred to a neurosurgeon, James Cable, who requested the disputed procedure in order to determine the exact location of the bulge and to evaluate further treatment options.

Carrier denied the preauthorization request, concluding that the procedure was not medically necessary. Claimant then requested medical dispute resolution. The matter was referred to an IRO designated by the Texas Workers' Compensation Commission (Commission)¹ for the review process. The IRO determined the thoracic discogram with CT scan was not reasonable or necessary. Claimant requested a hearing on the adverse IRO decision, and the matter was referred to the State Office of Administrative Hearings (SOAH).

The hearing on the merits convened and closed in this matter on November 2, 2005, before ALJ Tommy L. Broyles. Claimant appeared representing himself, and Carrier appeared and was represented by Robert R. Graves, Jr. Notice and jurisdiction are addressed in the findings of fact and conclusions of law.

II. DISCUSSION

After reviewing the evidence and arguments made, the ALJ concludes the requested procedure is medically necessary treatment for the compensable injury. The physician requesting the procedure, Dr. Cable, is a neurosurgeon who has worked with Claimant since January 2005. His initial findings were that Claimant had degenerative disc disease or internal disc disruption at T7-8. Dr. Cable's initial recommendation was aggressive physical therapy for three to six weeks. Claimant completed this therapy in February 2005 without relief from his pain. Dr. Cable then prescribed a three-level discogram with CT Scan at T6-7, T7-8, and T8-9. He noted that the discogram was justified and was appropriate for the concepts of compensable injury.

Carrier offered the written medical opinions of several physicians, including the designated doctor, John Sklar, M.D., and the IRO, in support of its position that the discogram is not medically necessary. Dr. Sklar opined that, "additional workup of this claimant's degenerative disc disease is unnecessary as his minimal degenerative change at T7-8 is unlikely to be the source of his problem, and even if it were, most likely, this is not a work-related condition." Similarly, the IRO found that

¹ Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation within the Texas Department of Insurance.

there is very little scientific evidence to support the use of discography in the thoracic spine and opined that the proposed discogram would not be reasonable or necessary as related to the original injury.

Consistent throughout the medical opinions relied upon by carrier is a significant bias against the use of discograms for the medical reasons proposed. Dr. Sklar stated, “[T]he use of discography, as we all know, is quite controversial and it is not well supported in the evidence-based medical literature.” Moreover, Claimant testified that Dr. Sklar did not even take the time to examine him. Rather, it appears he issued his findings based on preconceived determinations about the efficacy of the proposed treatment.

While Carrier certainly established that the use of discograms is a controversial matter in the medical community, the fact that there is controversy implies that there are different points of view in the debate. Clearly, Dr. Cable is on the other side of that debate, noting that a discogram is justified and appropriate for the concepts of the compensable injury. No one contests whether a discogram is an approved workers compensation procedure; it is. Therefore, the ALJ declines to make his decision based on the controversies surrounding discograms but rather limits his evaluation to whether a discogram is reasonable and necessary medical treatment in this particular case.

When Carrier denied the preauthorization request on April 27, 2005, the physician advisor suggested that further assessments and other treatment were needed before submitting Claimant for discography as a potential prelude to fusion surgery. More specifically, the advisor stated that Claimant’s rehab course had not been discussed, that there was no discussion of his pain tolerance or behavior, and that nonoperative care including injections was incompletely discussed. From the record in this case, it appears those concerns have been addressed. Extensive and aggressive physical therapy has been tried and failed. Dr. Cable has considered injections and may recommend them if the discogram is negative and surgery is not indicated. Finally, Claimant’s testimony suggests that he does not have psychological overlay or pain magnification issues preventing him from being a good discography candidate.

In short, the ALJ finds Dr. Cables's conclusions most credible and persuasive. He is the only physician who has extensively examined Claimant and appears to base his opinions on the particular facts of this case, not on a bias for or against the general procedure. For this reason, the ALJ determines that Claimant has met his burden of showing the requested discogram with CT scan is necessary.

III. FINDINGS OF FACT

1. ____ (Claimant) suffered a compensable injury to his lower back on or about ____, while lifting a piece of lumber at work.
2. At the time of Claimant's compensable injury, ____ (Carrier) was the workers' compensation insurer for Claimant's employer.
3. Claimant received medical treatments from his primary treating physician, including prednisone, muscle relaxers, pain killers, and physical therapy.
4. When Claimant continued to suffer pain from his injury, he was referred to a neurosurgeon, James Cable with the Back Institute (Provider).
5. Provider referred Claimant to several weeks of aggressive physical therapy, but it was unsuccessful in providing relief.
6. Based on Provider's interpretation of the MRIs and Claimant's continued pain, Provider requested preauthorization for a thoracic discogram with CT scan to evaluate further treatment options.
7. Carrier denied the preauthorization request, concluding the requested procedure was not medically necessary.
8. 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).
9. On July 27, 2005, after conducting medical dispute resolution, the IRO physician reviewer determined that a thoracic discogram with CT scan was not medically necessary and should be denied.
10. On August 23, 2005, Claimant requested a hearing on the IRO decision, and the case was referred to the State Office of Administrative Hearings (SOAH).

11. Notice of the hearing was sent to all parties on September 6, 2005, and 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.
12. The hearing convened on November 2, 2005, before ALJ Tommy L. Broyles. Carrier appeared and was represented at the hearing by attorney Robert R. Graves, Jr.; Claimant appeared, representing himself.
13. Extensive and aggressive physical therapy has been tried and failed.
14. Dr. Cable has considered injections and may recommend them if the discogram is negative and surgery is not indicated.
15. Claimant does not have psychological overlay or pain magnification issues preventing him from being a good discography candidate.
16. Findings from the discography with CT scan may provide Dr. Cable with information useful in determining whether Claimant is a candidate for surgery.
17. A discogram with CT scan at levels T6-7, T7-8, and T8-9 is medically reasonable and necessary treatment for Claimant's compensable injury.

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 has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14.
5. Claimant has proven, by a preponderance of the evidence, that the requested thoracic discogram with CT scan is a medically necessary treatment for Claimant's compensable injury.

6. Provider's request for preauthorization should be granted.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization is granted for a thoracic discogram with CT scan at levels T6-7, T7-8, and T8-9, as requested by Dr. Cable.

SIGNED December 1, 2005.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**