

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.

ISSUES

A contested case hearing was held on August 13, 2008, to decide the following disputed issue:

1. Is the requested discogram at L3-4, L4-5, and L5-S1 reasonably necessary health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JA, ombudsman.
Respondent/Carrier appeared and was represented by WS, attorney.

BACKGROUND INFORMATION

Claimant was the only witness at the August 13, 2008, CCH. On _____, while working as a truck driver, Claimant injured his back. Dr. PC, M.D., has recommended diskectomy for decompression on the right at L5-S1 for his symptomatic right L5 radiculopathy. Claimant's treating doctor is Dr. CA, D.O., who prescribes medications, referred him to Dr. PC, and currently has Claimant completely off work.

Claimant has had three lumbar MRI's (April 14, 2006; August 9, 2006; and August 13, 2007). Claimant has also had two epidural steroid injections. Physical therapy was recommended, but denied by Carrier. Dr. PC has recommended discogram at L3-4, L4-5, and L5-S1 prior to the diskectomy.

Texas Labor Code Section 408.021, provided 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. Section 401.011(22-a), defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community."

"Evidence based medicine" is further defined by Section 401.011(18-a), as the use of 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 in making decisions about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division Rule 137.100. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to

those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the Texas Labor Code.

Accordingly, in a medical necessity dispute, the first issue is whether the proposed care is consistent with the *ODG*. Under the *Official Disability Guideline (ODG)* in reference to Low Back, Discography, the recommendation is:

Not recommended. In the past, discography has been used as part of the pre-operative evaluation of patients for consideration of surgical intervention for lower back pain. However, the conclusions of recent, high quality studies on discography have significantly questioned the use of discography results as a preoperative indication for either IDET or spinal fusion. These studies have suggested that reproduction of the patient's specific back complaints on injection of one or more discs (concordance of symptoms) is of limited diagnostic value. (Pain production was found to be common in non-back pain patients, pain reproduction was found to be inaccurate in many patients with chronic back pain and abnormal psychosocial testing, and in this latter patient type, the test itself was sometimes found to produce significant symptoms in non-back pain controls more than a year after testing). Also, the findings of discography have not been shown to consistently correlate well with the finding of a High Intensity Zone (HIZ) on MRI. Discography may be justified if the decision has already been made to do a spinal fusion (but a positive discogram in itself would not allow fusion).

The *ODG* also states the following:

While not recommended above, if a decision is made to use discography anyway, the following criteria should apply:

- Back pain of at least 3 months duration
- Failure of recommended conservative treatment including active physical therapy
- 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 pain response to that injection)
- Satisfactory results from detailed psychosocial assessment (discography in subjects with emotional and chronic pain problems has been linked to reports of significant back pain for prolonged periods after injection, and therefore should be avoided)
- Intended as a screen for surgery, i.e., the surgeon feels that lumbar spine fusion is appropriate but is looking for this to determine if it is not indicated (although discography is not highly predictive) (Carragee, 2006). NOTE: In a situation where the selection criteria and other surgical indications for fusion are conditionally met, discography can be considered in preparation for the surgical procedure. However, all of the qualifying conditions must be met prior to proceeding to discography as discography should be viewed as a non-diagnostic but confirmatory study for selecting operative levels for the proposed surgical procedure. Discography should not be ordered for a patient who does not meet surgical criteria.
- Brief on potential risks and benefits from discography and surgery
- Single level testing (with control) (Colorado, 2001).

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

The IRO reviewer provided the following analysis in upholding the previous adverse determination:

The discography is not medically necessary. The provider states that the patient is suffering from a right L5 radiculopathy. From the imaging studies and exam, it appears the patient needs to be decompressed. A discogram is performed when fusion is considered. There is very little mention, if any, of the nature of the patient's back pain and whether the provider feels that it is discogenic in nature. Also there is no mention as to why a decompression alone would not suffice. If the provider is unsure as to whether the herniated disc at L5-S1 is causing the patient problems, then perhaps an EMG is indicated to look for an S1 radiculopathy.

Claimant presented a letter from Dr. PC to support his position. Dr. PC wrote the following:

I'm in receipt of your letter dated March 24, 2008 Re: (Claimant). In response to your questions, he does indeed seem to meet the objective criteria for discography as you have presented them as regards the *ODG* guidelines (although his primary care physician may need to address his psychological background, and any testing that had been performed, in my opinion, the patient is a suitable candidate in this respect.

In addition certainly the patient meets the criteria for which I have requested discography in my neurosurgical practice for patients with spinal disorders.

The *ODG* is clear that discography is not recommended and only may be justified if the decision has already been made to do a spinal fusion. In the instant case, there is no recommendation for a spinal fusion. Furthermore, Claimant does not meet the criterion if a decision is made to use the non-recommended discography anyway, in that Claimant has failed to show any satisfactory results from detailed psychosocial assessment. Claimant testified that he had not been recommended for any psychosocial assessment by any of this physicians.

Claimant has failed to provide any evidence-based medicine to contradict the *ODG*. Therefore, the requested discogram at L3-4, L4-5, and L5-S1 is not reasonably necessary health care for the compensable injury of _____.

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 _____, Claimant was the employee of (Employer), and 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. The *ODG* in reference to Low Back, does not recommend discography.
 4. While the *ODG* does not recommend discography, if a decision is made to use discography anyway, certain criteria, which includes the following must be met: surgeon feels that lumbar spine fusion is appropriate, but is looking for this to determine if it is not indicated; and there must be satisfactory results from a detailed psychosocial assessment.
 5. Spinal fusion has not been recommended for the Claimant.
 6. Claimant has not undergone a detailed psychosocial assessment.
 7. The preponderance of the evidence is not contrary to the decision of the IRO that the requested discogram at L3-4, L4-5, and L5-S1 is not reasonably required medical care for the compensable injury of _____.

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 requested discogram at L3-4, L4-5, and L5-S1 is not reasonably required medical care for the compensable injury of _____.

DECISION

The requested discogram at L3-4, L4-5, and L5-S1 is not reasonably required medical care for the compensable injury of _____.

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 **ACE AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST
SUITE 300
IRVING TX 75063**

Signed this 15th day of August, 2008.

Cheryl Dean
Hearing Officer