MEDICAL CONTESTED CASE HEARING NO. 09012

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.

ISSUE

A contested case hearing was held on August 26, 2008, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to an L2-3 through L5-S1 discogram and a Battery for Health Improvement test (BHI) for the compensable injury of _____.

PARTIES PRESENT

Petitioner/Claimant appeared by telephone, and was represented by Attorney AG, who appeared in person. Respondent/Carrier appeared by telephone, and was represented by Attorney SC.

BACKGROUND INFORMATION

Claimant sustained a back and knee injury when she was struck by a motor vehicle within the course and scope of her employment on _____. In contemplation of a spinal fusion, Dr. B requested preauthorization for the above-referenced procedures. Carrier denied that request, and the IRO, relying on the Official Diagnostic Guidelines (ODG), agreed with Carrier's decision. The evidence that purports to controvert the IRO's decision consists of a letter from Dr. B citing an alleged contradiction in the ODG regarding the advisability of discography during the pre-surgical testing phase.

DISCUSSION

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.

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 Official Disability Guidelines (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.

With regard to the low back, under Discography, the ODG provides:

> 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, and a negative discogram could rule out the need for fusion (but a positive discogram in itself would not allow fusion). (Carragee-*Spine*, 2000) (Carragee2-*Spine*, 2000) (Carragee3-*Spine*, 2000) (Carragee4-*Spine*, 2000) (Bigos, 1999) (ACR, 2000) (Resnick, 2002) (Madan, 2002) (Carragee-*Spine*, 2004) (Carragee2, 2004) (Maghout-Juratli, 2006) (Pneumaticos, 2006) (Airaksinen, 2006) Discography may be supported if the decision has already been made to do a spinal fusion, and a negative discogram could rule out the need for fusion on that disc (but a positive discogram in itself would not justify fusion). Discography may help distinguish asymptomatic discs among morphologically abnormal discs in patients without psychosocial issues. Precise prospective categorization of discographic diagnoses may predict outcomes from treatment, surgical or otherwise. (Derby, 2005) (Derby2, 2005) (Derby, 1999) Positive discography was not highly predictive in identifying outcomes from spinal fusion. A recent study found only a 27% success from spinal fusion in patients with low back pain and a positive single-level low-pressure provocative discogram, versus a 72% success in patients having a well-accepted single-level lumbar pathology of unstable spondylolisthesis. (Carragee, 2006) The prevalence of positive discogram may be increased in subjects with chronic low back pain who have had prior surgery at the level tested for lumbar disc herniation. (Heggeness, 1997) Invasive diagnostics such as provocative discography have not been proven to be accurate for diagnosing various spinal conditions, and their ability to effectively guide therapeutic choices and improve ultimate patient outcomes is uncertain. (Chou, 2008) Discography involves the injection of a water-soluble imaging material directly into the nucleus pulposus of the disc. Information is then recorded about the pressure in the disc at the initiation and completion of injection, about the amount of dye accepted, about the configuration and distribution of the dye in the disc, about the quality and intensity of the patient's pain experience and about the pressure at which that pain experience is produced. Both routine x-ray imaging during the injection and post-injection CT examination of the injected discs are usually performed as part of the study. There are two diagnostic objectives: (1) to evaluate radiographically the extent of disc damage on discogram and (2) to

characterize the pain response (if any) on disc injection to see if it compares with the typical pain symptoms the patient has been experiencing. Criteria exist to grade the degree of disc degeneration from none (normal disc) to severe. A symptomatic degenerative disc is considered one that disperses injected contrast in an abnormal, degenerative pattern, extending to the outer margins of the annulus and at the same time reproduces the patient's lower back complaints (concordance) at a low injection pressure. Discography is not a sensitive test for radiculopathy and has no role in its confirmation. It is, rather, a confirmatory test in the workup of axial back pain and its validity is intimately tied to its indications and performance. As stated, it is the end of a diagnostic workup in a patient who has failed all reasonable conservative care and remains highly symptomatic. Its validity is enhanced (and only achieves potential meaningfulness) in the context of an MRI showing both dark discs and bright, normal discs -- both of which need testing as an internal validity measure. And the discogram needs to be performed according to contemporary diagnostic criteria -- namely, a positive response should be low pressure, concordant at equal to or greater than a VAS of 7/10 and demonstrate degenerative changes (dark disc) on MRI and the discogram with negative findings of at least one normal disc on MRI and discogram. See also Functional anesthetic discography (FAD).

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

o Back pain of at least 3 months duration

o Failure of recommended conservative treatment including active physical therapy

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 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)

o 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.

o Briefed on potential risks and benefits from discography and surgery

o Single level testing (with control) (Colorado, 2001)

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

The ODG, the evidence-based treatment guidelines adopted by the Division, unequivocally state that discography is not a recommended procedure, and cite numerous medical studies supporting that position. The contrary opinion of Dr. B cites no such studies; although Dr. B does reference the requirements of the Texas Medical Board and the ODG that discography be performed before spinal surgery is undertaken, he does not include a copy of the Texas Medical Board's requirement with his letter of July 23, 2008, and the Hearing Officer's reference to the most

current version of the ODG section regarding spinal surgery fails to corroborate Dr. B's assertion on this point.

Insofar as the psychological testing recommendation is concerned, the Hearing Officer notes that during the Contested Case Hearing, Claimant acknowledged that such testing was unnecessary in her case, and focused her argument on the advisability of the discogram. Under these circumstances, further consideration of this matter is not warranted.

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. On _____, Claimant was employed by (Employer).
2. On _____, Employer subscribed to a policy of workers' compensation insurance issued by the (Carrier).
3. On _____, Claimant's residence was located within seventy-five miles of the (City) Field office of the Texas Department of Insurance, Division of Workers' Compensation.
4. 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.
5. Dr. B, M.D. recommended that Claimant undergo discograms at the L2-3 through L5-S1 spinal levels and a Battery for Health Improvement test.
6. The IRO determined that the diagnostic testing procedures recommended by Dr. B were not reasonable and necessary in this case.
7. The record of the Contested Case Hearing does not contain an evidence-based medical opinion contrary to the Decision of the IRO.
8. An L2-3 through L5-S1 discogram and a Battery for Health Improvement test are not health care reasonably required 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 preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to an L2-3 through L5-S1 discogram and a Battery for Health Improvement test (BHI) for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to an L2-3 through L5-S1 discogram and a Battery for Health Improvement test (BHI) for the compensable injury of _____.

ORDER

Carrier is not liable for the medical 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 **TRAVELERS INDEMNITY COMPANY,** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
D/B/A CSC - LAWYERS' INCORPORATING SERVICE COMPANY
701 BRAZOS STREET, # 1050
AUSTIN, TEXAS 78701

Signed this 4th day of September, 2008.

Ellen Vannah
Hearing Officer