MEDICAL CONTESTED CASE HEARING NO. 09072
M6-09-16337-01

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 December 16, 2008, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is entitled to a lumbar discogram at L3/4, L4/5, and L5/S1 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Carrier appeared and was represent by BJ, attorney. Claimant appeared and was assisted by LW, ombudsman.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury on _____. The injury included the lumbar spine. Claimant received conservative medical care from Dr. C, D.O., who diagnosed Claimant with thoracic displaced discs at multiple levels, bilateral cervical radiculopathy/neuropathy, and intractable pain and headache. Dr. C referred Claimant to Dr. R, M.D., for a neurosurgical consultation.

Dr. R examined Claimant on November 21, 2007, for complaints of low back pain with radiculopathy into the bilateral lower extremities. Dr. R noted Claimant's physical examination was normal with a negative bilateral straight leg raising (SLR) test, and recommended that Claimant undergo a lumbar MRI and a bilateral lower extremity EMG study. The December 10, 2007, lumbar MRI revealed that Claimant had a disc bulge, broad based disc protrusion, and lateral recess narrowing at L4/5. The December 14, 2007, bilateral lower extremity EMG study was within normal limits. Dr. R reported that the lumbar facet blocks and lumbar ESI were unsuccessful in alleviating Claimant's low back pain. Dr. R recommended that Claimant undergo a lumbar discogram at L3/4, L4/5, and L5/S1, and forwarded his preauthorization request to Carrier for the lumbar discogram.

On August 29, 2008, Dr. PG, M.D., an orthopedic surgeon, performed a utilization review (UR). Dr. PG recommended that Carrier deny Dr. R's request for the lumbar discogram as being not medically necessary. Carrier denied Dr. R's request for the lumbar discogram.

Dr. R requested reconsideration, and Carrier had another UR with Dr. G, D.O., a neurosurgeon. Dr. G recommended that Carrier deny Dr. R's request for the lumbar discogram based on Claimant not meeting the criteria as set out in the Official Disability Guidelines (ODG). Carrier again denied Dr. R's request for the lumbar discogram as being not medically necessary.

Dr. R requested an IRO review. The IRO rendered a decision on October 16, 2008, and determined that the recommended lumbar discogram by Dr. R was medically necessary. In support of the decision, the IRO stated that the ODG was ambivalent about lumbar discograms in that the ODG does not recommend lumbar discograms, but the ODG does outline criteria for the use of a lumbar discogram under certain clinical situations. The IRO erroneously opined that Claimant met the eight criteria that were listed, and incorrectly noted that Claimant appeared to be a candidate for a lumbar fusion.

Carrier's witness, Dr. B, M.D., a neurosurgeon, said the ODG was very specific in that a lumbar discogram was only recommended as a preoperative determination to perform spinal fusion. Dr. B stated that Claimant did not meet the criteria outlined in the ODG because Dr. R would be using the lumbar discogram to perform multiple level testing as opposed to single level testing with control.

Claimant's witness, Dr. VB, D.C., said that he participated with Dr. R in making decisions about Claimant's health care. Dr. VB stated that Dr. R had neither recommended nor discussed with Claimant the need for lumbar spinal surgery prior to recommending the lumbar discogram. Dr. VB acknowledged that Dr. R would be using the lumbar discogram to perform multiple level testing as opposed to single level testing with control.

DISCUSSION

Texas Labor Code §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 §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 (EBM) or, if EBM 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 EBM if that evidence is available. EBM is further defined in Texas Labor Code §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 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) Although discography, especially combined with CT scanning, may be more accurate than other radiologic studies in detecting degenerative disc disease, its ability to improve surgical outcomes has yet to be proven. It is routinely used before IDET, yet only occasionally used before spinal fusion. (Cohen, 2005) 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).

Discography is Not Recommended in ODG.

Patient selection criteria for Discography if provider & payor agree to perform anyway:

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 clearly states that lumbar discography is not a recommended procedure, and may only be justified if the decision has been made for the patient to undergo lumbar spinal fusion. At the time Dr. R requested the discogram, he had not made a recommendation that Claimant undergo lumbar spinal fusion. In addition, Dr. R had determined that he would utilize the lumbar discogram to perform multiple level testing as opposed to single level testing with control. The ODG provides that if a decision is made to use lumbar discography, the patient must meet the required eight criteria, including the spinal surgery criteria and single level testing with control criteria before a lumbar discography is performed. Claimant met six of the required eight criteria outlined in the ODG. The two required criteria which Claimant did not meet, were the screening for lumbar spinal surgery and single level testing with control.

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).

   C. Claimant sustained a compensable injury on _____.

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. Dr. R, M.D., recommended that Claimant undergo a lumbar discogram at L3/4, L4/5, and L5/S1 for the compensable injury of _____.

4. Dr. R did not recommend that Claimant undergo lumbar spinal fusion.

5. Dr. R determined that he would utilize the lumbar discogram to perform multiple level testing as opposed to single level testing with control.

6. Claimant met six out of the required eight criteria, as outlined in the ODG, but did not meet two out of the required eight criteria, including screening for lumbar surgical criteria and single level testing with control.

7. The IRO determined that the lumbar discogram at L3/4, 4/5, and L5/S1 was medically necessary treatment for Claimant's compensable injury of _____,

8. The determination of the IRO is contrary to the criteria as set out in the ODG.

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 contrary to the decision of the IRO that the Claimant is entitled to a lumbar discogram at L3/4, L4/5, and L5/S1 for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar discogram at L3/4, L4/5, and L5/S1 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 of _____, in accordance with Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY,** and the name and address of its registered agent for service of process is

RUSSELL RAY OLIVER, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723

Signed this 14th day of January, 2009.

Wes Peyton
Hearing Officer