MEDICAL CONTESTED CASE HEARING NO. 11020
M6-10-26406-01

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 September 22, 2010 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 not entitled to a cervical EMG/NCS for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by PO, ombudsman.
Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant sustained multiple injuries after being assaulted and robbed while performing his duties as a maintenance assistant on _____. Claimant presented to Dr. B, a pain management specialist, on January 25, 2010 for an initial consultation. Dr. B noted upon physical examination that Claimant had severe cervical and thoracic radicular symptoms and he recommended an EMG/NCS. Dr. B's request was denied by the Carrier's utilization review agents and Claimant appealed the Carrier's denial to an IRO. The IRO upheld the Carrier's denial. The IRO decision in this case is based on the Official Disability Guidelines (ODG) and noted that the Claimant's medical records failed to establish the necessary criteria as prescribed in the ODG. Claimant appealed the IRO decision to a medical contested case hearing.

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 making decisions about the care of individual patients. The Commissioner of the Division of Workers' Compensation is

required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. (Texas Labor Code Section 413.011(e).) Medical services consistent with the medical policies and fee guidelines adopted by the Commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

The ODG sets forth the following information regarding EMGs and NCSs:

> EMG:
>
> Recommended (needle, not surface) as an option in selected cases. The American Association of Electrodiagnostic Medicine conducted a review on electrodiagnosis in relation to cervical radiculopathy and concluded that the test was moderately sensitive (50%-71%) and highly specific (65%-85%). (AAEM, 1999) EMG findings may not be predictive of surgical outcome in cervical surgery, and patients may still benefit from surgery even in the absence of EMG findings of nerve root impingement. This is in stark contrast to the lumbar spine where EMG findings have been shown to be highly correlative with symptoms.
> *Positive diagnosis of radiculopathy:* Requires the identification of neurogenic abnormalities in two or more muscles that share the same nerve root innervation but differ in their peripheral nerve supply.
> *Timing:* Timing is important as nerve root compression will reflect as positive if active changes are occurring. Changes of denervation develop within the first to third week after compression (fibrillations and positive sharp waves develop first in the paraspinals at 7-10 days and in the limb muscles at 2-3 weeks), and reinervation is found at about 3-6 months
> *Acute findings:* Identification of fibrillation potentials in dennervated muscles with normal motor unit action potentials (usually within 6 months of symptoms: may disappear within 6 weeks in the paraspinals and persist for up to 1-2 years in distal limbs).
> *Chronic findings:* Findings of motor unit action potentials with increased duration and phases that represent reinnervation. With time these become broad, large and polyphasic and may persist for years.
> *Anatomy:* The test primarily evaluates ventral (anterior) root function (motor) and may be negative if there is dorsal root compression (sensory) only. Only C4-8 and T1 in the neck region have limb representation that can be tested electrodiagnostically. The anatomic basis for this lies in the fact that the cervical nerve roots have a motor and a sensory component. It is possible to impinge the

sensory component with a herniated disc or bone spur and not affect the motor component. As a result, the patient may report radicular pain that correlates to the MRI without having EMG evidence of motor loss.
Paraspinal fibrillation potentials: May be seen in normal individuals and are nonspecific for etiology. The presence of these alone is insufficient to make a diagnosis of radiculopathy and they may be absent when there is a diagnosis of radiculopathy secondary to sampling error, timing, or because they were spared. They may support a diagnosis of radiculopathy when corresponding abnormalities are present in the limb muscles.
Indications when particularly helpful: EMG may be helpful for patients with double crush phenomenon, in particular, when there is evidence of possible metabolic pathology such as neuropathy secondary to diabetes or thyroid disease, or evidence of peripheral compression such as carpal tunnel syndrome.
H-reflex: Technically difficult to perform in the upper extremity but can be derived from the median nerve. The test is not specific for etiology and may be difficult to obtain in obese patients or those older than 60 years of age.
(Negrin, 1991) (Alrawi, 2006) (Ashkan, 2002) (Nardin, 1999) (Tsao, 2007) See Discectomy-laminectomy-laminoplasty. (Surface EMG and F-wave tests are not very specific and therefore are not recommended. For more information on surface EMG, see the Low Back Chapter.)

NCS:

Not recommended. There is minimal justification for performing nerve conduction studies when a patient is presumed to have symptoms on the basis of radiculopathy. (Utah, 2006) See also the Carpal Tunnel Syndrome Chapter for more details on NCS. Studies have not shown portable nerve conduction devices to be effective.

The IRO provided a summary of the information contained in the medical records and the following analysis and explanation of its decision:

> "The IRO reviewer could not determine from the notes that there was a radicular pain pattern or any abnormal neurological findings such as reflexes or sensory abnormalities. The ODG does not approve nerve conduction studies to exclude a radiculopathy in the absence of coexisting CTS. The AANEM (The ODG is using the old name) found limited value with cervical emgs. The value is increased with motor vs. sensory findings. The ODG advises this when there is a question of alternative diagnoses after radiological studies are reviewed. The records provided do not support this. Therefore, the study is not medically justified at this time."

To overcome the IRO's opinion, Claimant presented his testimony, medical records, and a narrative report from Dr. C dated July 15, 2010. Dr. C is an associate in Dr. B's office and he states that he has examined Claimant on several occasions and his examinations have been positive for radiculopathy. He states that he believes that the EMG/NCS is medically reasonable and necessary based on Claimant's subjective complaints, his clinical objective findings on physical examination, and Claimant's failure of all previous conservative treatment.

Although Claimant presents a medical opinion to support the necessity of the procedure, Dr. C does not explain how the ODG or any other treatment guidelines were utilized to make a decision concerning the medical necessity of the cervical EMG/NCS. Claimant did not present any evidence based medical evidence to overcome the IRO decision. Therefore, the IRO decision is upheld.

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. A cervical EMG/NCS is 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 IRO that a cervical EMG/NCS is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a cervical EMG/NCS 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 **EMPLOYERS INSURANCE COMPANY OF WAUSAU** and the name and address of its registered agent for service of process is:

CORPORATION SERVICES COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701

Signed this 27th day of September, 2010.

Jacquelyn Coleman
Hearing Officer