MEDICAL CONTESTED CASE HEARING NO. 11092
M6-10-25526-01

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.

ISSUE

A contested case hearing was held on December 6, 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 low pressure lumbar discogram and a post discogram CT for the compensable injury _____?

PARTIES PRESENT

Petitioner, Dr. B appeared for himself. Claimant appeared and was represented by, attorney MG. Respondent/Carrier appeared and was represented by MM, attorney.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury on _____. The injury included the lumbar spine. The Claimant was referred to Dr. B, M.D., for a neurosurgical consultation.

Carrier's utilization review determined that the lumbar discogram did not meet the criteria of the Official Disability Guidelines (ODG) concerning a lumbar discography, and was not medically necessary for Claimant's compensable injury of _____. Carrier's utilization review denied Dr. B's request. Dr. B requested an IRO review. On March 1, 2010, the IRO reviewer, a board certified orthopedic surgeon, rendered a decision, determined that the low pressure lumbar discogram and post discogram CT were not medically necessary, and cited the current edition of the Official Disability Guidelines (ODG) concerning a lumbar discography. The IRO reviewer further determined that Claimant's medical records did not document any evidence of an ongoing radiculopathy and there was no weakness in a radicular distribution. He noted that the MRI of the lumbar spine dated December 16, 2008 reveals diffuse symmetrical bulging of three millimeters, slightly flattening the ventral surface of the sac and causing mild encroachment upon both exiting neural foramen. The L4-5 disc appears unremarkable. Dr. B testified that the level of the disc bulge was at L3-4. The psychological screen demonstrated the patient had extreme anxiety and was sent to a psychiatrist who approved the claimant for surgery. Two other physicians, Dr. C and Dr. G supported the IRO physician's decision. All of the Petitioners and Claimant's exhibits were excluded at the hearing due to untimely exchange as proven by faxed documents. Documentation demonstrated that the documents were first provided on 7/15/10 and not on 4/19/10 as required. Dr. B testified that he looked at the MRI and not the ODG Guidelines to determine whether or not the claimant was a candidate for discography and post-discogram CT. The IRO reviewer went on to state that patients like the claimant who have chronic pain syndromes like the claimant have a high false positive rate.

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 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 (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 ODG cites patient selection criteria for discography if the provider and the payor agree to perform anyway.

With regard to lumbar discogram, the ODG provides as follows:

> 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) Provocative discography is not recommended because its diagnostic accuracy remains uncertain, false-positives can occur in persons without low back pain, and its use has not been shown to improve clinical outcomes. (Chou2, 2009) 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.

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. 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 “are” considered parties to an appeal. In a Contested Case Hearing, the party appealing the IRO decision has the burden of

overcoming the decision issued by an IRO by a preponderance of evidence based medicine evidence."

With regard to the low back, under Discography, the ODG identifies numerous medical articles and studies by various authors conducted from 1997 through 2009, and provides that discography is not recommended. If discography is not recommended there is no need for a post discogram CT. The ODG cites patient selection criteria for discography if the provider and the payor agree to perform anyway.

The ODG clearly states that lumbar discography is not a recommended procedure, and may only be justified if the decision is based on parameters not evident in the case at hand. At the time the Dr. B requested the lumbar discography, he testified that he made his decision based on the MRI results. Dr. B's tender of medical articles was not persuasive and did not overcome the IRO decision.

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 _____.

   D. The IRO determined that the low pressure lumbar discogram and the post discogram CT were not medically necessary treatment for Claimant's compensable injury of _____.

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. B, M.D., recommended that Claimant undergo a low pressure lumbar discogram and post discogram CT for the compensable injury of _____.

4. The IRO utilized the current edition of the ODG, and determined that the low pressure lumbar discography and post discogram CT were not medically necessary treatment for Claimant's compensable injury of _____.

5. Evidence-based medical evidence offered by the Petitioner was not persuasive and the preponderance of the evidence based medical evidence was not contrary to the IRO's decision.

6. The requested low pressure lumbar discography and post discogram CT are not health care reasonably required for Claimant's 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 the Claimant is not entitled to a low pressure lumbar discogram and post discogram CT for the compensable injury of _____.

DECISION

Claimant is not entitled to a low pressure lumbar discogram and post discogram CT 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 **AMERISURE MUTUAL INSURANCE COMPANY,** and the name and address of its registered agent for service of process is:

CINDY GHALIBAF
5221 NORTH O'CONNOR BLVD., STE. 400
IRVING, TEXAS 75039

Signed this 6th day of December, 2010.

Susan Meek
Hearing Officer