

**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 March 24, 2011, to decide the following disputed issues:

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 discogram and a post discogram CT for the compensable injury of \_\_\_\_\_?
2. Did the provider fail to exhaust administrative remedies by failing to timely appeal the pre-authorization denial? (Added by agreement of the parties)

**PARTIES PRESENT**

Petitioner, Dr. B, appeared without representation. Claimant appeared and was represented by, LE, attorney. Respondent/Carrier appeared and was represented by JL, attorney.

**BACKGROUND INFORMATION**

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

Carrier's utilization reviewer agents determined that the cervical discogram did not meet the criteria of the Official Disability Guidelines (ODG) concerning cervical discography, and was not medically necessary for Claimant's compensable injury of \_\_\_\_\_. Carrier denied Dr. B's request. Dr. B requested an IRO review.

On August 24, 2010, the IR reviewer, a board certified orthopedic surgeon, rendered a decision that the cervical discogram and post discogram CT were not medically necessary, citing the current edition of the Official Disability Guidelines (ODG) concerning cervical 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 cervical spine dated October 5, 2007 reveals partial desiccation of the disc material from C2-3 through C7-T1. At C2-3 there was no significant abnormality and at C3-4 there is a 1.5 mm central disc bulge minimally indenting upon the cervical cord centrally. At C4-5 there is a 1.5 mm central disc bulge abutting the cervical cord and no significant canal or foraminal stenosis. At C5-6 there is a 1.5 mm central disc bulge abutting the cervical cord. The claimant has had physical therapy and cervical injections and her radicular symptoms have resolved on recent physical examination. The IRO physician stated that, based on the records

reviewed, cervical discography would be of no value. Two other physicians supported the IRO physician's decision.

Dr. B testified that he looked at the MRI and not the ODG to determine whether or not the claimant was a candidate for a cervical discogram and post-discogram CT. Dr. B first submitted a pre-authorization request for a discogram in this case on March 23, 2010. Carrier denied the request on April 2, 2010. Dr. B testified that additional requests were denied on April 30, 2010 and July 20, 2010. He further testified that there was no change in the claimant's physical condition. Dr. B acknowledged that his request for reconsideration of the April 2, 2010, denial was first submitted on July 27, 2010.

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 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 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 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. Division Rule 133.308(t) states, "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 (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."

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

Not recommended. Conflicting evidence exists in this area, though some recent studies condemn its use as a preoperative indication for IDET or Fusion, and indicate that discography may produce symptoms in control groups more than a year later, especially in those with emotional and chronic pain problems. (Carragee, 2000) (Carragee2, 2000) (Bigos, 1999) (Grubb, 2000) (Zeidman, 1995) (Manchikanti, 2009) Cervical discography has been used to assist in determining the specific level or levels causing the neck pain and, potentially, which levels to fuse; however, controversy regarding the specificity of cervical discograms has

also been debated and more research is needed. (Wieser, 2007) Assessment tools such as discography lack validity and utility. (Haldeman, 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 is Not Recommended in ODG.** See also the Low Back Chapter.  
**Patient selection criteria for Discography if provider & payor agree to perform anyway:**

- o Neck pain of 3 or more months
- o Failure of recommended conservative treatment
- 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 psychosocial assessment (discography in subjects with emotional & chronic pain has been associated with reports of significant prolonged back pain after injection, and thus should be avoided)
- o Should be considered a candidate for surgery
- o Should be briefed on potential risks and benefits both from discography and from surgery
- o Due to high rates of positive discogram after surgery for disc herniation, this should be potential reason for non-certification"

Discograms are not recommended in the ODG and may only be justified if the decision is based on parameters not evident in the case at hand. At the time Dr. B requested the discogram, 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. If a discogram is not performed, there is no need for a post discogram CT.

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 cervical 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 cervical discogram and post discogram CT for the compensable injury of \_\_\_\_\_.
4. The IRO utilized the current edition of the ODG, and determined that cervical discogram and post discogram CT were not medically necessary treatment for Claimant's compensable injury of \_\_\_\_\_.
5. The medical articles offered by the Petitioner were not persuasive and the preponderance of the evidence based medical evidence was not contrary to the IRO's decision.
6. The requested cervical discogram and post discogram CT is not health care reasonably required for Claimant's compensable injury of \_\_\_\_\_.
7. The provider failed to exhaust his administrative remedies by not timely appealing the pre-authorization denial within 15 days from the receipt of denial.

### **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 cervical discogram and post discogram CT for the compensable injury of \_\_\_\_\_.
4. The provider failed to exhaust his administrative remedies by not timely appealing the preauthorization denial.

### **DECISION**

Claimant is not entitled to a cervical discogram and post discogram CT for the compensable injury of \_\_\_\_\_. The provider failed to exhaust his administrative remedies by not timely appealing the preauthorization denial.

### **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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7<sup>TH</sup> ST., STE. 620  
AUSTIN, TEXAS 78701**

Signed this 28th day of March, 2011.

Susan Meek  
Hearing Officer