

MEDICAL CONTESTED CASE HEARING NO. 16013

**DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a cervical MRI without contrast for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

A contested case hearing was held on January 12, 2016, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to a cervical MRI without contrast for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by BT, ombudsman. Respondent/Carrier appeared and was represented by LW, attorney.

**DISCUSSION**

Claimant was a firefighter with the (Employer) and sustained a compensable injury on (Date of Injury). The parties stipulated that the injury includes a cervical sprain/strain, a left shoulder sprain/strain, and a disc extrusion at C6-C7 and cervical radiculopathy. Medical records indicate that Claimant had a cervical MRI done on January 23, 1997, as requested by BM, MD, his treating doctor at that time. That study revealed the presence of a 4mm broad-based left-sided posterior disc extrusion. On June 3, 2008, Claimant underwent a second MRI. He was still treating with Dr. M at that time. In 2015, Claimant moved from the (City) area to (City), Texas, and changed treating doctors to KF, DO. Dr. F requested another MRI. Carrier refused to preauthorize the third MRI. Carrier's initial adverse determination letter, dated June 26, 2015, stated that the requested MRI was denied because the submitted documentation did not indicate the presence of any new changes on neurological examination. Claimant requested reconsideration of the denial and the request was submitted to a second utilization review agent. The utilization review agent, RX, MD, determined that the request should be denied because the situations referenced in the Official Disability Guidelines (ODG) for a repeat MRI did not exist. Claimant then appealed Carrier's denial of the MRI through the Independent Review Organization (IRO) process. The Texas Department of Insurance appointed Medical Assessments Inc., as the IRO. On September 2, 2015, the IRO upheld Carrier's denial of the request for an additional MRI and Claimant appealed the IRO decision in accordance with Rule 133.308.

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 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 §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 for 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 §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 §413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by 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. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered a party 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. (Rule 133.308(s).) Evidence-based medical evidence may take the form of expert witness testimony or documentary evidence from a medical expert. Lay testimony alone is not sufficient to meet the evidentiary standard under Rule 133.308(s).

The Neck and Upper Back chapter of the ODG contains the following recommendation for repeat MRIs:

#### Magnetic Resonance Imaging (MRI)

Not recommended except for indications list below. Patients who are alert, have never lost consciousness, are not under the influence of alcohol and/or drugs, have no distracting injuries, have no cervical tenderness, and have no neurologic findings, do not need imaging. Patients who do not fall into this category should have a three-view cervical radiographic series followed by computed tomography

(CT). In determining whether or not the patient has ligamentous instability, magnetic resonance imaging (MRI) is the procedure of choice, but MRI should be reserved for patients who have clear-cut neurologic findings and those suspected of ligamentous instability. **Repeat MRI is not routinely recommended, and should be reserved for a significant change in symptoms and/or findings suggestive of significant pathology (eg, tumor, infection, fracture, neurocompression, recurrent disc herniation).** (Anderson, 2000) (ACR, 2002) **See also ACR Appropriateness Criteria™.** (Emphasis added.) MRI imaging studies are valuable when physiologic evidence indicates tissue insult or nerve impairment or potentially serious conditions are suspected like tumor, infection, and fracture, or for clarification of anatomy prior to surgery. MRI is the test of choice for patients who have had prior back surgery. (Bigos, 1999) (Bey, 1998) (Volle, 2001) (Singh, 2001) (Colorado, 2001) For the evaluation of the patient with chronic neck pain, plain radiographs (3-view: anteroposterior, lateral, open mouth) should be the initial study performed. Patients with normal radiographs and neurologic signs or symptoms should undergo magnetic resonance imaging. If there is a contraindication to the magnetic resonance examination such as a cardiac pacemaker or severe claustrophobia, computed tomography myelography, preferably using spiral technology and multiplanar reconstruction is recommended. (Daffner, 2000) (Bono, 2007)

Indications for imaging -- MRI (magnetic resonance imaging):

- Chronic neck pain (= after 3 months conservative treatment), radiographs normal, neurologic signs or symptoms present
- Neck pain with radiculopathy if severe or progressive neurologic deficit
- Chronic neck pain, radiographs show spondylosis, neurologic signs or symptoms present
- Chronic neck pain, radiographs show old trauma, neurologic signs or symptoms present
- Chronic neck pain, radiographs show bone or disc margin destruction
- Suspected cervical spine trauma, neck pain, clinical findings suggest ligamentous injury (sprain), radiographs and/or CT "normal"
- Known cervical spine trauma: equivocal or positive plain films with neurological deficit
- Upper back/thoracic spine trauma with neurological deficit

Claimant provided his testimony and documentary evidence of diagnoses and treatment prior to the IRO review. He did not provide expert witness testimony or documentary evidence from a

medical expert to show that the IRO physician reviewer erred in determining that the repeat imaging requested by Dr. F is not reasonably required health care because of a significant change in symptoms or findings suggestive of significant pathology. The IRO physician reviewer's determination is consistent with the provisions of the ODG. Claimant failed to offer expert evidence that would tend to show that the ODG recommendations are inappropriate in Claimant's specific situation.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

### **FINDINGS OF FACT**

1. The parties stipulated as follows:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance as a self-insured.
  - D. Claimant sustained a compensable injury on (Date of Injury).
  - E. Carrier has accepted a cervical sprain/strain, posterior disc extrusion at C6-C7, cervical radiculopathy, and a left shoulder sprain/strain as components of the compensable injury.
  - F. The Texas Department of Insurance appointed Medical Assessments Inc. as the IRO in this matter.
  - G. The IRO determined that Claimant is not entitled to a cervical MRI without contrast.
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. The preponderance of the evidence-based medical evidence is not contrary to the IRO decision that the requested repeat MRI is not health care reasonably required for the compensable injury of (Date of Injury).

## 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 requested MRI without contrast is not reasonably required health care for the compensable injury of (Date of Injury).

## DECISION

Claimant is not entitled to a cervical MRI without contrast for the compensable injury of (Date of Injury).

## 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 Section 408.021.

The true corporate name of the insurance carrier is **(EMPLOYER) (SELF-INSURED)** and the name and address of its registered agent for service of process is

**DEBORAH WATKINS  
1500 MARILLA, 5D SOUTH  
DALLAS, TEXAS 75201**

Signed this 12<sup>th</sup> day of January, 2016.

KENNETH A. HUCHTON  
Hearing Officer