MEDICAL CONTESTED CASE HEARING NO. 20003

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. For the reasons discussed herein, the Administrative Law Judge determines that Petitioner / Claimant is not entitled to lumbar laminectomy at L4-S1 with possible fusion and instrumentation for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A medical contested case hearing was held on January 8, 2020, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to lumbar laminectomy at L4-S1 with possible fusion and instrumentation for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner / Claimant appeared and was assisted by AF, ombudsman. Respondent / Carrier appeared and was represented by CA, attorney. Employer appeared by and through BC and RP.

EVIDENCE PRESENTED

The following witnesses testified:

For Petitioner / Claimant: Claimant.

For Carrier / Respondent: None.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 and ALJ-2.

Petitioner / Claimant's Exhibits C-1 through C-7.

Carrier / Respondent's Exhibits CR-A through CR-F.

DISCUSSION

On (Date of Injury), Petitioner / Claimant worked for the (Employer) and sustained an injury to his lower back. He received medical treatment for his injury and has been seen by SH, M.D., on several occasions. Dr. H recommended and requested lumbar surgery in the form of lumbar laminectomy at L4-S1 with possible fusion and instrumentation. Such request underwent utilization review and was denied on August 9, 2018 by JH, M.D., an orthopedic surgeon. Reconsideration was requested and GW, M.D., a neurological surgeon, denied such reconsideration on October 25, 2018. Another reconsideration was requested, and such reconsideration was denied on November 14, 2018 by RL, D.O., an orthopedic surgeon. Petitioner / Claimant then appealed the denials to an IRO and the IRO reviewer, an orthopedic surgeon, upheld the previous adverse determinations. Consequently, Petitioner / Claimant appealed the IRO decision and this was the reason for the present discussion and decision.

Medical Necessity

An injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Tex. Lab. Code Ann. § 408.021(a). "Health care reasonably required" is defined 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. Tex. Lab. Code Ann. § 401.011(22a). Health care under the Texas Workers' Compensation system must be consistent with evidence-based medicine if that evidence is available. "Evidence-based medicine" means the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature, other current scientifically based texts, and treatment and practice guidelines. Tex. Lab. Code Ann. § 401.011(18a). 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. Tex. Lab. Code Ann. § 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with the Texas Labor Code. Tex. Lab. Code Ann. § 413.017(1).

In accordance with the above statutory guidance, the Division has adopted treatment guidelines by rule. 28 Tex. Admin. Code § 137.100. This provision directs health care providers to provide treatment in accordance with the current edition of the *Official Disability Guidelines* (hereinafter "ODG") and that 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.

Some of the pertinent provisions of the ODG applicable to this case are as follows, to wit:

Discectomy / laminectomy:
Recommended for indications below.

ODG Indications for Surgery™ -- Discectomy/laminectomy --
Required symptoms/findings; imaging studies; and conservative treatments below:

I. Symptoms/Findings, which confirm the presence of radiculopathy. Objective findings on examination need to be present. Straight leg raising test, crossed straight leg raising, and reflex exams should correlate with symptoms and imaging.

Findings require ONE of the following:

A. L3 nerve root compression, requiring ONE of the following:
   1. Severe unilateral quadriceps weakness/mild atrophy
   2. Mild-to-moderate unilateral quadriceps weakness
   3. Unilateral hip/thigh/knee pain

B. L4 nerve root compression, requiring ONE of the following:
   1. Severe unilateral quadriceps/anterior tibialis weakness/mild atrophy
   2. Mild-to-moderate unilateral quadriceps/anterior tibialis weakness
   3. Unilateral hip/thigh/knee/medial pain

C. L5 nerve root compression, requiring ONE of the following:
   1. Severe unilateral foot/toe/dorsiflexor weakness/mild atrophy
   2. Mild-to-moderate foot/toe/dorsiflexor weakness
   3. Unilateral hip/lateral thigh/knee pain

D. S1 nerve root compression, requiring ONE of the following:
   1. Severe unilateral foot/toe/plantar flexor/hamstring weakness/atrophy
   2. Moderate unilateral foot/toe/plantar flexor/hamstring weakness
   3. Unilateral buttock/posterior thigh/calf pain

(EMGs are optional to obtain unequivocal evidence of radiculopathy but not necessary if radiculopathy is already clinically obvious.)

II. Imaging Studies, requiring ONE of the following for concordance between radicular findings on radiologic evaluation and physical exam findings:

A. Nerve root compression (L3, L4, L5, or S1)
B. Lateral disc rupture
C. Lateral recess stenosis

Diagnostic imaging modalities, requiring ONE of the following:

1. MR imaging
2. CT scanning
3. Myelography
4. CT myelography and X-Ray

III. Conservative Treatments, requiring ALL of the following:

A. Activity modification (not bed rest) after patient education (>= 2 months)

B. Drug therapy, requiring at least ONE of the following:

1. NSAID drug therapy
2. Other analgesic therapy
3. Muscle relaxants
4. Epidural Steroid Injection (ESI)

C. Support provider referral, requiring at least ONE of the following (in order of priority):

1. Physical therapy (teach home exercise/stretching)
2. Manual therapy (chiropractor or massage therapist)
3. Psychological screening that could affect surgical outcome
4. Back school (*Fisher, 2004*)

For average hospital LOS after criteria are met, see Hospital length of stay (LOS).

Laminectomy / laminotomy:
Recommended for lumbar spinal stenosis.

See also Discectomy / laminectomy for surgical indications, with the exception of confirming the presence of radiculopathy. For average hospital LOS after criteria are met, see *Hospital length of stay* (LOS).

For patients with lumbar spinal stenosis, surgery (standard posterior decompressive laminectomy alone, without discectomy) offered a significant advantage over nonsurgical treatment in terms of pain relief and functional improvement that was maintained at 2 years of follow-up, according to a new SPORT study. Discectomy should be reserved for those conditions of disc herniation causing radiculopathy. Laminectomy may be used for spinal stenosis secondary to degenerative processes exhibiting ligamental hypertrophy, facet hypertrophy, and disc protrusion, in addition to anatomical derangements of the spinal column such as tumor, trauma, etc. (*Weinstein, 2008*) (*Katz, 2008*) This study showed that surgery for spinal stenosis and for disc herniation were not as successful as total hip replacement but were comparable to total knee replacement in their success. Pain was reduced to within 60% of normal levels, function improved to 65% normal, and quality of life was improved by approximately 50%. The study compared the gains in quality of

life achieved by total hip replacement, total knee replacement, surgery for spinal stenosis, disc excision for lumbar disc herniation, and arthrodesis for chronic low back pain. (*Hansson, 2008*)

A comparison of surgical and nonoperative outcomes between degenerative spondylolisthesis and spinal stenosis patients from the SPORT trial found that fusion was most appropriate for spondylolisthesis, with or without listhesis, and decompressive laminectomy alone most appropriate for spinal stenosis. (*Pearson, 2010*) In patients with spinal stenosis, those treated surgically with standard posterior decompressive laminectomy showed significantly greater improvement in pain, function, satisfaction, and self-rated progress over 4 years compared to patients treated nonoperatively, and the results in both groups were stable between 2 and 4 years. (*Weinstein, 2010*) Comparative effectiveness evidence from SPORT shows good value for standard posterior laminectomy after an imaging-confirmed diagnosis of spinal stenosis [as recommended in ODG], compared with nonoperative care over 4 years. (*Tosteson, 2011*) Decompressive surgery (laminectomy) is more effective for lumbar spinal stenosis than land-based exercise, but given the risks of surgery, a self-management program with exercise prior to consideration of surgery is also supported. (*Jarrett, 2012*) This study indicates that in patients with a primary diagnosis of lumbar spinal stenosis (LSS), the rate of fusions and the use of implants has increased, and the decompression rate has decreased. Trends in the surgical management of stenosis have become increasingly important to study because more invasive procedures, including the addition of fusion and the use of implants, have been associated with greater use of resources and increased complications. (*Bae, 2013*)

Over time, surgery (laminectomy for spinal stenosis) results in better outcomes out to at least 5 years, but the benefits of surgery likely erode beyond that time as patients age. (*Lurie, 2015*) Laminectomy is a surgical procedure for treating spinal stenosis by relieving pressure on the spinal cord. The lamina of the vertebra is removed or trimmed to widen the spinal canal and create more space for the spinal nerves.

In the instant case, the utilization review doctors (i.e., Dr. H, Dr. W, and Dr. L) denied the requested treatment and the IRO reviewer upheld the denial of the requested treatment. The IRO reviewer, who was an orthopedic surgeon, reviewed Petitioner / Claimant's records and opined that the proposed treatment was not indicated as medically necessary based on the clinical data provided and the ODG. The IRO reviewer noted that the records lacked corroborating physical examination findings for the requested treatment and that the ODG criteria had not been met. Thereafter, the IRO reviewer cited the ODG in upholding the denials of the requested treatment.

When weighing expert testimony, the administrative law judge must first determine whether the doctor rendering an expert opinion is qualified to offer such. In addition, the administrative law judge must determine whether the opinion is relevant to the issues at bar and whether it is based upon a reliable foundation. An expert's bald assurance of validity is not enough. *See Black v. Food Lion, Inc.*, 171 F.3d 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. *See Black*, 171 F.3d 308. In determining the reliability of the evidence, the administrative law judge must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990) *aff'd*, 824 S.W.2d 568 (Tex. Crim. App. 1992).

Additionally, "[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." *See* 28 Tex. Admin. Code § 133.308 (s). "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." *Id*. Evidence-based medical evidence entails the opinion of a qualified expert that is supported by evidence-based medicine, if evidence-based medicine exists.

Accordingly, Petitioner / Claimant, as the party appealing the IRO decision, had the burden of overcoming the IRO decision by a preponderance of evidence-based medical evidence. Although Petitioner / Claimant presented documentary evidence, including his medical records, there was little explanation through the use of evidence-based medical evidence as to how Petitioner / Claimant met the requirements of the ODG for the requested treatment. Petitioner / Claimant also did not establish the necessity of the requested treatment at issue through other evidence-based medical evidence outside of the ODG. As such, evidence-based medical evidence explaining that the requested treatment was medically reasonable and necessary was lacking in this case. Therefore, the preponderance of the evidence was not contrary to the decision of the IRO that Petitioner / Claimant was not entitled to lumbar laminectomy at L4-S1 with possible fusion and instrumentation for the compensable injury of (Date of Injury).

The Administrative Law Judge 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 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 (Date of Injury), Petitioner / Claimant was an employee of the (Employer), Employer.

   C. On (Date of Injury), Employer provided workers' compensation insurance as a self-insurer.

   D. On (Date of Injury), Petitioner / Claimant sustained a compensable injury.

   E. The IRO determined that Petitioner / Claimant was not entitled to lumbar laminectomy at L4-S1 with possible fusion and instrumentation for the compensable injury of (Date of Injury).

2. Respondent / Carrier delivered to Petitioner / Claimant a single document stating the true corporate name of Respondent / Carrier, and the name and street address of Respondent / Carrier's registered agent, which document was admitted into evidence as Administrative Law Judge's Exhibit Number 1.

3. Petitioner / Claimant did not present sufficient evidence-based medical evidence to overcome the decision of the IRO that he was not entitled to lumbar laminectomy at L4-S1 with possible fusion and instrumentation for the compensable injury of (Date of Injury).

4. Lumbar laminectomy at L4-S1 with possible fusion and instrumentation 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 preponderance of the evidence was not contrary to the decision of the IRO that Petitioner / Claimant is not entitled to lumbar laminectomy at L4-S1 with possible fusion and instrumentation for the compensable injury of (Date of Injury).

DECISION

Petitioner / Claimant is not entitled to lumbar laminectomy at L4-S1 with possible fusion and instrumentation for the compensable injury of (Date of Injury).

ORDER

Respondent / Carrier is not liable for the benefits at issue in this hearing. Petitioner / Claimant remains entitled to medical benefits for the compensable injury in accordance with Tex. Lab. Code Ann. § 408.021.

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

(Name)
(Street)
(City, State, Zipcode)

Signed this 10th day of January 2020.

Julio Gomez, Jr.
Administrative Law Judge