

DOCKET NO. 453-05-0116.M2
MDR NO. M2-04-1473-01

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
DALLAS FIRE INSURANCE CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Claimant ___ requested a hearing on an Independent Review Organization's (IRO) decision denying him preauthorization for a lumbar diskogram at levels L3-4 and L4-5. The IRO denied the requested diskogram because ___ previously had surgery at those lumbar levels and diskography after surgical intervention is usually not a valid procedure. After the IRO issued its decision, ___'s treating doctor submitted a letter of medical necessity for a diskogram at levels L2-3 and L5-6,¹ above and below the prior surgical sites. This decision agrees with the IRO and concludes that the requested diskogram at L3-4 and L4-5 is not medically reasonable or necessary. Therefore, ___'s request is denied. However, this decision does not address whether a diskogram would be appropriate at levels L2-3 or L5-6 because that request was not presented to the carrier or the IRO and is not a proper issue for this proceeding.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here. Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on January 18, 2005, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, Austin, Texas. Claimant ___ appeared by telephone and was assisted by Luz Loza, an Ombudsman with the Texas Workers Compensation Commission (TWCC). Attorney John Fundis appeared on behalf of Dallas Fire Insurance Company. The hearing concluded and the record closed the same day.

II. DISCUSSION

¹ Most people have only five lumbar vertebrae, but ___ has six.

A. Parties's Evidence and Arguments

Both ___ and Carrier offered into evidence various medical records and other documents, and ___ testified at the hearing. No other witnesses testified.

The documentary evidence established that the Claimant ___ is a 49-year-old male who injured himself at work on ___, when he twisted his back while walking on a plastic covering that had been placed over some carpet. Claimant had been installing acoustical ceiling tiles and had just come down off his ladder. He had persistent low back pain after the accident that was not relieved by conservative treatment. As a result, he had a laminectomy and discectomy at L4-5 in November 2002. ___ did well after this surgery but re-injured his back during physical therapy. This resulted in a second surgery for a laminectomy and discectomy at L3-4 in August 2003. Unfortunately, ___ continued to experience low back pain extending into his left leg. A myelogram with CT scan performed January 9, 2004, showed degenerative changes, osteophytes (bony growths) at L2-3 and L3-4, and mild disk bulges at L3-4 and L4-5 but no compromise of the thecal sac or canal stenosis. ___ cannot take epidural steroid injections due to allergic reactions and he cannot take anti-inflammatory medications due to blood pressure problems. ___ did receive a facet block injection without steroids in March 2004, but this provided no pain relief.

On April 16, 2004, Dr. Bernard Crowell requested preauthorization for a diskogram at L3-4, but this was denied by the Carrier on April 22, 2004, as medically unnecessary. Carrier noted that ___ already had surgery at that L3-4 and L4-5 and that the January 2004 myelogram with CT scan did not show any significant stenosis or compromise of the thecal sac at those levels. In early May 2004, Dr. Crowell again requested preauthorization for a diskogram, although in this request he specified both levels L3-4 and L4-5, with controls at L5-6. Carrier again denied the request due to lack of medical necessity, noting that diskograms are ineffective when performed on disks that have been compromised by surgery.

Claimant appealed the adverse preauthorization decision to the Texas Workers' Compensation Commission, which referred the matter to the IRO. On August 2, 2004, the IRO upheld the Carrier's denial of preauthorization. The reviewing doctor stated his rationale as follows:

The request for treatment was for a lumbar discogram. After review of the records, it is noted that the patient did already undergo surgical intervention at the lumbar 3-4 and lumbar 4-5 levels. Discography after undergoing surgical intervention is usually not a valid procedure. . . . Discography can at times be a helpful test, but usually is not helpful in a patient who has had previous surgical intervention in the lumbar spine. Articles from -argee in the spring of 2002 do indicate that discography is not

usually diagnostic in a patient who has had previous surgical intervention at those levels. . . .

Claimant requested a contested case hearing on the IRO's denial of preauthorization for a diskogram at L3-4 and L4-5. Then, on December 8, 2004, Dr. Robert Myles (from the same office as Dr. Crowell) wrote a letter of medical necessity in which he stated that he needed a diskogram at L2-3 and L5-6 to determine if a fusion would be appropriate for _____. In that letter, Dr. Myles acknowledged that a diskogram is usually not helpful at the disk levels where previous surgery has been performed. However, he stated that a diskogram at L2-3 and L5-6 was needed to evaluate _____ for a spinal fusion.

In his testimony, _____ described his accident and the treatment he has received. He stated that he continues to have back pain and that Dr. Myles wants to perform a fusion. It is his understanding that Dr. Myles needs the diskogram to determine whether any problems exist above and below L3-4 and L4-5 before performing the fusion. _____ reiterated that he would like the diskogram and fusion performed in the hope of relieving his pain and discomfort.

In argument, _____ (by Ms. Loza) requests that the diskogram be preauthorized. He believes that a fusion (preceded by a diskogram) is the only option he has left to relieve his back pain. _____ also notes that he has an extra lumbar vertebra (L-6) and suggests that this may have confused the doctor on the disk levels when he made the original request for preauthorization.

Carrier states that it has already approved a myelogram with CT scan, an MRI, and other tests to diagnose _____'s problems since his last surgery. In Carrier's view, _____'s doctors are trying to "pile on one more test." Carrier also emphasizes that _____'s treating doctor requested a diskogram at the L3-4 and L4-5 levels where _____ previously had laminectomies and diskectomies. It argues that it is undisputed that a diskogram is ineffective when performed at a prior surgical site, and it emphasizes that _____'s doctor did not request a diskogram at L2-3 and L5-6 until after the IRO already issued its decision. Carrier states that a provider cannot change the preauthorization request after the IRO has rendered a decision; consequently, it argues that the request for a diskogram at L2-3 and L5-6 is not a proper issue for this proceeding.

B. ALJ's Analysis and Decision

The ALJ agrees with the IRO decision and finds that a diskogram is not appropriate for _____ at the L3-4 and L4-5 disk levels. It is undisputed that _____ had surgery at those disk levels and that a diskogram is ineffective at a lumbar disk level that has undergone previous surgery. Therefore, a

diskogram is not medically reasonable or necessary for ___ at L3-4 or L4-5 as requested by ___'s treating physician. After the IRO issued its decision, ___'s treating doctor submitted a statement of medical necessity for a diskogram at L2-3 and L5-6. However, that request is not a proper issue for this hearing because it was not previously submitted to the Carrier or to an IRO. Therefore, if ___'s treating doctor continues to believe that a diskogram is appropriate at L2-3 and L5-6, he should submit a new request for preauthorization to the Carrier for that procedure. The ALJ emphasizes that he makes no findings on whether a diskogram at those levels is medically reasonable or necessary because it is not a proper issue in this case.

In summary, the ALJ finds that a diskogram is not medically reasonable or necessary for ___ at L3-4 or L4-5 due to the prior surgeries at those levels. The ALJ makes no findings or decision on whether a diskogram would be appropriate for ___ at L2-3 and L5-6 as that question is not a proper issue for this case.

III. FINDINGS OF FACT

1. Claimant ___ suffered a compensable injury on ___, when he twisted his back while walking on a plastic covering that had been placed over some carpet.
2. ___ had persistent low back pain after the accident that was not relieved by conservative treatment. As a result, he had a laminectomy and discectomy at L4-5 in November 2002 and a laminectomy and discectomy at L3-4 in August 2003. After the second surgery, ___ continued to experience low back pain extending into his left leg.
3. A myelogram with CT scan performed on ___ on January 9, 2004, showed degenerative changes, osteophytes (bony growths) at L2-3 and L3-4, and mild disk bulges at L3-4 and L4-5 but no compromise of the thecal sac or canal stenosis.
4. ___ cannot take epidural steroid injections due to allergic reactions and he cannot take anti-inflammatory medications due to blood pressure problems. ___ did receive a facet block injection without steroids in March 2004, but this provided no pain relief.
5. On April 16, 2004, Dr. Bernard Crowell requested preauthorization for a diskogram for ___ at L3-4.
6. Dallas Fire Insurance Co. (Carrier) denied Dr. Crowell's request on April 22, 2004, as medically unnecessary. Carrier noted that ___ already had surgery at that L3-4 and L4-5 and that the January 2004 myelogram with CT scan did not show any significant stenosis or compromise of the thecal sac at those levels.
7. In early May 2004, Dr. Crowell again requested preauthorization for a diskogram, although in this request he specified levels L3-4 and L4-5, with controls at L5-6.
8. Carrier again denied Dr. Crowell's request due to lack of medical necessity, noting that diskograms are ineffective when performed on disks that have been compromised by

surgery.

9. ___ requested medical dispute resolution.
10. On August 2, 2004, the Independent Review Organization (IRO) denied ___'s appeal and denied preauthorization for the requested lumbar diskogram.
11. ___ requested a hearing before the State Office of Administrative Hearings, seeking to reverse the IRO's denial of preauthorization for a lumbar diskogram.
12. On December 8, 2004, Dr. Robert Myles (from the same office as Dr. Crowell) wrote a letter of medical necessity in which he stated that ___ needed a diskogram at L2-3 and L5-6 to determine whether a fusion would be appropriate.
13. A lumbar diskogram at L3-4 and L4-5 is not medically reasonable or necessary because ___ has previously had surgery at those levels and a diskogram is ineffective for disk levels that have been compromised by surgery.
14. Whether a diskogram at levels L2-3 and L5-6 is medically reasonable or necessary for ___ is not a proper issue for this proceeding because that request was not presented to Carrier or the IRO until after the IRO issued its decision.
15. A hearing was conducted January 18, 2005, and the record closed the same day.
16. ___ and the Dallas Fire Insurance Company attended the hearing.
17. All parties received not less than ten days notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
18. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. ___ has the burden of proof by a preponderance of the evidence.
4. A lumbar diskogram at L3-4 and L4-5 is not medically reasonable or necessary for the proper diagnosis and treatment of ___. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
5. ___'s appeal is denied and Dallas Fire Insurance Company is not required to pay for a lumbar

diskogram at L3-4 and L4-5 for ____

ORDER

IT IS, THEREFORE, ORDERED that ____'s appeal is denied and preauthorization is denied for ____ to receive a lumbar diskogram at L3-4 and L4-5.

SIGNED February 2, 2005.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**