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In the Matter of the ORS 656.245 Medical Services Dispute of

**Archer, Larry, Claimant**

Contested Case No: HH01-126

**FINAL ORDER**

June 24, 2002

LARRY ARCHER, Petitioner

SAIF CORPORATION , Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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The Medical Review Unit (MRU) of the Department of Consumer and Business Services, Workers' Compensation Division (WCD) issued an administrative order on October 31, 2001 which denied petitioner's request for approval of discography.

On December 28, 2001, Hearing Officer Paul Vincent conducted a telephone hearing. Petitioner, Larry Archer (claimant), was represented by attorney Thomas Cary. Attorney Stefan Gonzalez represented respondent SAIF Corporation (insurer). WCD waived appearance. No witnesses testified.

The petitioner filed exceptions to Hearing Officer Vincent's March 6, 2002 Proposed and Final Contested Case Hearing Order, which affirmed MRU's administrative order. The respondent timely responded to the exceptions. Before the Director, the issue is diagnostic medical services. The entire record, consisting of a tape recording of the hearing, all evidence received,<sup>1</sup> and all documents filed, has been considered.

The director adopts Hearing Officer Vincent's Proposed Order, with the following supplementation.

Claimant contends that, by virtue of two previous stipulations, the law of the case is that the treatment for claimant's low back symptoms continue to be compensable. Claimant further relies on the opinion of Dr. Morris that chronic low back strain has diverse etiologies, and that internal disc disruption may be the result of or a subset of chronic low back strain. The discography was to evaluate further whether his chronic low back could be diagnosed as internal disc disruption. Thus, the discography is necessary to determine the cause or extent of his compensable injury.

The insurer issued a partial denial of claimant's claim for chronic low back strain on August 25, 1995. (Ex. 76). At that time, Dr. James Morris had opined that claimant sustained a

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<sup>1</sup> The hearing officer admitted "WCD Exhibits 1-45" and petitioner's exhibits. However, WCD's exhibits consisted of 1-115. Accordingly, the hearing officer's evidentiary ruling is corrected to admit WCD Exhibits 1-115 and petitioner's exhibits.

flare-up of his thoracolumbar strain, which was a result of his April 1984 work injury. Dr. Morris thought claimant's symptoms were consistent with a myofascial syndrome involving the left thoracolumbar and hip girdle musculature. Dr. Morris recommended palliative care. (Ex. 78). Pursuant to a November 20, 1995 Stipulation, the insurer rescinded its August 1995 denial, paid medical bills up to October 26, 1995, and processed the claim according to law. (Ex. 80).

On September 14, 2000, the insurer denied claimant's current low back condition on the ground that his accepted lumbosacral strain had resolved and that his current condition was no longer related to the accepted claim. (Ex. 99). The insurer subsequently rescinded the denial pursuant to a January 26, 2001 Stipulation. The insurer continued to accept only a lumbar strain. (Ex. 101).

Prior to the September 2000 stipulation, Dr. Morris had diagnosed claimant's condition as chronic low back pain with suspected increased radicular symptoms, rule out intervertebral disc disruption. He recommended an MRI and consideration of discogram and intradiscal electrothermal therapy (IDET). (Ex. 91).

The effects of the stipulations establish that the insurer remains liable for claimant's accepted condition of lumbar strain. They do not preclude the insurer from contesting the appropriateness of the proposed discogram as it relates to the accepted condition. Claimant wants the discogram to determine whether his chronic low back strain is caused by or includes an internal disc disruption. In essence, however, claimant sought to rule in internal disc disruption as the cause of his chronic low back pain.

Claimant is seeking more than to merely determine the extent of his accepted condition. He is seeking to establish, through diagnostic tests, the existence of a new or consequential medical condition (internal disc disruption) as related to his chronic low back strain. Diagnostic tests for this purpose are not compensable. *Roseburg Forest Products v. Langley*, 156 Or App 454 (1998); *Counts v. International Paper Co.*, 146 Or App 768 (1997).

IT IS HEREBY ORDERED that the March 6, 2002 Proposed and Final Contested Case Hearing Order is affirmed.

DATED this \_\_\_\_\_ day of June, 2002.

**MARY NEIDIG, DIRECTOR  
DEPARTMENT OF CONSUMER  
AND BUSINESS SERVICES**

By: \_\_\_\_\_  
John Shilts, Administrator  
Workers' Compensation Division