

**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.

**ISSUE**

A contested case hearing was held on March 4, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that a L3/4 transforaminal epidural injection is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by MV, ombudsman.

Carrier appeared and was represented by CN, attorney.

The Division-provided interpreter was ML.

**BACKGROUND INFORMATION**

Claimant worked as a store greeter. She injured her low back bending to fix an electrical cord on \_\_\_\_.

Claimant received conservative treatment from Dr. N. She was referred to Dr. U for treatment. Dr. U recommended a transforaminal epidural injection at L3-4. Dr. U performed this procedure on June 21, 2007. Claimant was evaluated by Dr. U on July 2, 2007. Dr. U notes that Claimant is significantly helped by the epidural injection.

Claimant is next evaluated on August 13, 2007. Dr. U finds that Claimant's symptoms have returned, but on an intermittent basis. Dr. U notes that Claimant had great relief with the prior epidural injection and he recommends a follow-up transforaminal epidural injection to be both diagnostic and therapeutic.

The Carrier denied Dr. U's request and also denied the reconsideration request. The medical dispute was referred to an Independent Review Organization (IRO) for decision on December 7, 2007. The IRO decision found that the requested L3-4 transforaminal epidural injection is not medically necessary and upheld the Carrier's denial.

Texas Labor Code Section 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 qualified 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 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. Thus, the focus of any health care dispute starts with the health care set out in the Official Disability Guidelines (ODG).

The IRO decision properly quotes the operative provisions of the ODG noting that repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response. A second injection is not recommended if there is inadequate response to the first injection. In order for the first injection to be considered successful, there should be documentation of at least 50 - 70% relief of pain from baseline and evidence of improved function for at least 6 to 8 weeks after delivery.

There is some evidence that Claimant's pain decreased after the epidural injection of June 21, 2007. Dr. U, on July 2, 2007, found Claimant was significantly helped by the injection. No attempt was made by Dr. U to quantify the success of the epidural injection in terms of the ODG. Did Claimant have a 50 - 70% relief of pain from baseline? Did the Claimant have improved function for at least 6 to 8 weeks after the initial injection? Claimant's doctor does not address the ODG requirements. This type analysis is required to comply with the evidence based medicine standard.

In the present case, Claimant failed to meet her burden of proof. Claimant presented medical records showing that her initial epidural injection was somewhat successful in reducing her lumbar pain. However, Claimant failed to provide medical evidence of how her medical records and medical history complied with the ODG. Claimant's request for medical treatment without sufficient reference to the ODG or other evidence based medicine, does not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO decision. The preponderance of the medical evidence is not contrary to the IRO decision and the requested epidural injection does not meet the criteria set out in the ODG.

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.
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. Claimant received a transforaminal epidural injection on June 21, 2007 which resulted in some pain relief over a limited period of time.
  4. Claimant failed to establish that the initial epidural injection resulted in 50 - 70% pain relief from baseline over a 6 to 8 week period of time.
  5. The preponderance of the medical evidence is not contrary to the IRO decision that a L3-4 transforaminal epidural injection is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_\_.

### **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 IRO decision that a transforaminal epidural injection is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_\_.

### **DECISION**

The preponderance of the evidence is not contrary to the IRO decision that a transforaminal epidural injection is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_\_.

### **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 §408.021.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE CO.  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 23rd day of April, 2008.

Donald E. Woods

Hearing Officer