

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 November 5, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that the Claimant is not entitled to right L4-5 transforaminal epidural with selective nerve root block for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was represented by CS, Attorney.

Carrier appeared and was represented by SS, Attorney.

BACKGROUND INFORMATION

Claimant does auto repair work for the Employer. He injured his lower back while twisting to work under the dash of a vehicle on _____. Initially, Claimant thought he had a lumbar sprain that would heal with time. When his symptoms continued, he sought chiropractic care in March 2008.

After a month of chiropractic treatment, Claimant did not improve and was sent for a lumbar MRI on April 7, 2008. The MRI was read to show degenerative disc disease at L5-S1 level. There was a broad disc protrusion at L5-S1 at the right paracentral region. This was adjacent to the right S1 nerve root which is slightly deformed and displaced. There was no central canal stenosis and no other significant abnormality. More importantly, the MRI was read to show no pathology at the L4-5 level, which is the level that is the subject of this treatment request.

On May 2, 2008, Claimant began treatment with Dr. U. Dr. U noted that the MRI dated April 7, 2008 showed a right herniated disc is present at L4-5. There is no explanation as to why Dr. U read the MRI report differently than the doctor that provided the initial reading. Dr. U provides a diagnosis of lumbar herniated disc and lumbar radiculopathy. He recommends treatment to be a right transforaminal epidural with selective nerve root block. This is the treatment request that is the subject of this medical dispute.

The Carrier denied the request for treatment noting that the ODG was not met. Particularly, there was no indicating that Claimant had received conservative care, much less failed conservative care. A reconsideration was also denied and Claimant requested an IRO review.

The IRO decision dated August 4, 2008 upheld the Carrier's denial. It states that the Claimant does not meet ODG criteria for epidural steroid injections. The medical records do not document that Claimant has had conservative treatment. The IRO decision notes that the MRI findings were at L5-S1, not at L4-5, the level of the present treatment request.

The latest medical records from Dr. U are dated August 20, 2008. He notes the adverse IRO decision, but fails to address the substance of the IRO decision. Dr. U, even after reviewing the IRO decision, never asserts that Claimant has failed conservative care. He never explains the reason for requesting treatment at L4-5, when the MRI shows problems only at L5-S1.

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 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 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).

Claimant, as the party appealing the IRO decision, has the burden of overcoming the decision issued by the IRO by a preponderance of the evidence-based medical evidence. The IRO decision is based on the ODG and notes that Claimant's medical records fail to meet the criteria set out in the ODG. Claimant's records do not show compliance with the ODG or any other evidence-based medicine guidelines.

The preponderance of the evidence is not contrary to the IRO decision. Claimant is not entitled to the right L4-5 transforaminal epidural with selective nerve root block for the compensable injury of _____.

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. The IRO decision, based on the ODG, upheld the Carrier's denial of the medical treatment requested.
4. Claimant failed to submit evidence-based medical evidence contrary to the IRO decision.
5. Right L4-5 transforaminal epidural with selective nerve root block is not health care reasonably required 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 decision of the IRO that right L4-5 transforaminal epidural with selective nerve root block is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to right L4-5 transforaminal epidural with selective nerve root block 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 **OLD REPUBLIC INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232**

Signed this 10th day of November, 2008.

Donald E. Woods
Hearing Officer