

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.

ISSUES

A contested case hearing was held on May 21, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a bilateral transforaminal ESI at C5-C6 and fluoroscopy for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by CS, attorney.
Respondent/Carrier appeared and was represented by SL, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his cervical spine on _____ when he was driving a forklift and was "t-boned" by another forklift. Claimant underwent an MRI of the cervical spine on December 7, 2008 which revealed multilevel spondylosis, mild canal stenosis at C3-4 and C5-6, moderate to severe left foraminal narrowing at C6-7, moderate bilateral foraminal narrowing at C3-4 and C5-6 and moderate right foraminal narrowing at C6-7. Claimant testified that he has undergone physical therapy and pain medication but neither has improved his neck pain. Claimant testified that he has restricted range of motion in the neck as well as left arm pain and loss of strength. Claimant underwent an EMG of the upper extremities on January 22, 2009 which did not identify any significant evidence of radiculopathy either acute or chronic. Claimant's treating doctors have given clinical diagnoses of radiculopathy and recommended a bilateral transforaminal ESI at C5-C6 and fluoroscopy. This request was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a board certified orthopedic surgeon, upheld the previous adverse determination noting that evidence-based literature suggests that cervical epidural steroid injections should be reserved for individuals who have clear evidence of radiculopathy and have failed conservative care. The IRO reviewer stated, "In this particular case, the imaging study report shows nothing more than mild foraminal stenosis at C5-6, the level of concern. Furthermore, the physical exam findings do not specifically identify signs that would show conclusive evidence of radiculopathy." The IRO concluded that the Claimant does not meet the criteria set forth by the *ODG* for the use of an ESI.

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. Section 401.011(22-a) defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by Section 401.011(18-a) as 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 making decisions about the care of individual patients.

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 *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 *ODG*.

Pursuant to the *ODG* for use of Epidural steroid injections, therapeutic:

Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, and avoiding surgery, but this treatment alone offers no significant long-term functional benefit.

- (1) Radiculopathy must be documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing.
- (2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).
- (3) Injections should be performed using fluoroscopy (live x-ray) for guidance
- (4) If used for diagnostic purposes, a maximum of two injections should be performed. A second block is not recommended if there is inadequate response to the first block. Diagnostic blocks should be at an interval of at least one to two weeks between injections.
- (5) No more than two nerve root levels should be injected using transforaminal blocks.
- (6) No more than one interlaminar level should be injected at one session.
- (7) In the therapeutic phase, repeat blocks should only be offered if there is at least 50% pain relief for six to eight weeks, with a general recommendation of no more than 4 blocks per region per year.
- (8) Repeat injections should be based on continued objective documented pain and function response.
- (9) Current research does not support a "series-of-three" injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections.
- (10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or stellate ganglion blocks or sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.
- (11) Cervical and lumbar epidural steroid injection should not be performed on the same day.

Criteria for the use of Epidural steroid injections, diagnostic:

To determine the level of radicular pain, in cases where diagnostic imaging is ambiguous, including the examples below:

- (1) To help to evaluate a pain generator when physical signs and symptoms differ from that found on imaging studies;
- (2) To help to determine pain generators when there is evidence of multi-level nerve root compression;

- (3) To help to determine pain generators when clinical findings are suggestive of radiculopathy (e.g. dermatomal distribution) but imaging studies are inconclusive;
- (4) To help to identify the origin of pain in patients who have had previous spinal surgery.

The Claimant testified that he has undergone physical therapy and pain medications which have not alleviated his symptoms and that he does suffer from radiating pain and loss of strength in his left upper extremity. The medical records document subjective complaints of left arm symptoms; however, there does not appear to be evidence of motor or sensory deficits on clinical examinations and the EMG performed on January 22, 2009 showed no evidence of radiculopathy. The ODG criteria specifically require that radiculopathy be documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing. Other than conclusory statements from the Claimant's treating doctors that the Claimant does meet the criteria pursuant to the *ODG* for an ESI and that the Claimant would benefit from an ESI before a surgical consultation, the Claimant's treating doctors fail to specifically explain how the Claimant meets the *ODG* criteria for an ESI, particularly given the negative EMG. Based on the evidence presented, the Claimant failed to present any evidence-based medical opinion to overcome the IRO's decision and the preponderance of the evidence is not contrary to the IRO's determination.

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).
 - C. Claimant sustained a compensable injury on _____.
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 does not meet the criteria for a bilateral transforaminal ESI at C5-C6 and fluoroscopy as set forth in the *ODG*.
4. The requested bilateral transforaminal ESI at C5-C6 and fluoroscopy 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 a bilateral transforaminal ESI at C5-C6 and fluoroscopy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a bilateral transforaminal ESI at C5-C6 and fluoroscopy 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 **FIDELITY & GUARANTY INSURANCE** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN, TX 78701**

Signed this 21st day of May, 2009.

Carol A. Fougerat
Hearing Officer