

**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 June 29, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a cervical epidural steroid injection for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was represented by LE, attorney. Petitioner/Provider Dr. KB appeared as a witness in this matter. Respondent/Carrier appeared and was represented by ST, attorney.

**BACKGROUND INFORMATION**

Claimant sustained compensable injuries to her cervical spine, left shoulder, and left wrist. Claimant has been diagnosed with stenosis at C4-C5, C5-C6, and C6-C7. The claimant's orthopedic surgeon, Dr. KB, requested a cervical epidural steroid injection to treat the symptom of cervical pain which radiates to the claimant's left shoulder. Dr. B's request was denied twice by the carrier's utilization review agents and their denial was upheld by the Independent Review Organization (IRO). The IRO, a board certified orthopedic surgeon, provided the following rationale for its decision:

"It is my opinion that the adverse determination be upheld. The patient clearly does not meet ODG Guidelines, which require radiculopathy by physical examination and corroborated by imaging studies, and/or electrodiagnostic testing. No less than six physicians have noted a normal sensory and motor examination, as well as normal reflexes. This means there is no objective evidence of radiculopathy and therefore, cervical epidural injections are not supported by ODG. Additionally, electrodiagnostic studies were performed and did not disclose any evidence of radiculopathy."

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.

The Division of Workers' Compensation has adopted treatment guidelines under Division Rule 137.100. That rule requires that health care providers provide treatment in accordance with the current edition of the ODG, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the Texas Labor Code. The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the ODG.

With regard to epidural steroid injections, the ODG provides as follows:

Recommended as an option for treatment of radicular pain (defined as pain in dermatomal distribution with corroborative findings of radiculopathy). See specific criteria for use below. In a recent Cochrane review, there was one study that reported improvement in pain and function at four weeks and also one year in individuals with chronic neck pain with radiation. (Peloso-Cochrane, 2006) (Peloso, 2005) Other reviews have reported moderate short-term and long-term evidence of success in managing cervical radiculopathy with interlaminar ESIs. (Stav, 1993) (Castagnera, 1994) Some have also reported moderate evidence of management of cervical nerve root pain using a transforaminal approach. (Bush, 1996) (Cyteval, 2004) A recent retrospective review of interlaminar cervical ESIs found that approximately two-thirds of patients with symptomatic cervical radiculopathy from disc herniation were able to avoid surgery for up to 1 year with treatment. Success rate was improved with earlier injection (< 100 days from diagnosis). (Lin, 2006) There have been recent case reports of cerebellar infarct and brainstem herniation as well as spinal cord infarction after cervical transforaminal injection. (Beckman, 2006) (Ludwig, 2005) Quadriplegia with a cervical ESI at C6-7 has also been noted (Bose, 2005) and the American Society of Anesthesiologists Closed Claims Project database revealed 9 deaths or cases of brain injury after cervical ESI (1970-1999). (Fitzgibbon, 2004) These reports were in contrast to a retrospective review of 1,036 injections that showed that there were no catastrophic complications with the procedure. (Ma, 2005) The American Academy of Neurology recently concluded that epidural steroid injections may lead to an improvement in radicular lumbosacral pain between 2 and 6 weeks following the injection, but they do not affect impairment of function or the need for surgery and do not provide long-term pain relief beyond 3 months, and there is insufficient evidence to make any recommendation for the use of epidural steroid injections to treat radicular cervical pain. (Armon, 2007) There is evidence for short-term symptomatic improvement of radicular symptoms with epidural or selective root injections with corticosteroids, but these treatments did not appear to decrease the rate of open surgery. (Haldeman, 2008) See the Low Back Chapter for more information and references.

**Criteria for the 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.

An EMG performed on March 27, 2008 by Dr. MP indicated that there was no clear evidence of radiculopathy. Dr. KB testified his physical examination of the claimant revealed evidence of radiculopathy. While this may be true, the ODG requires that the physical examination be corroborated by objective testing. In this case, the objective testing does not match the physical examination. The MRIs that were performed showed degenerative changes only and the EMG was negative. Based on the evidence presented, the Claimant and Petitioner failed to meet their burden 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 \_\_\_\_\_.
  - D. The Independent Review Organization (IRO) determined that the claimant should not have a cervical epidural steroid injection.
- 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. A cervical epidural steroid injection 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 cervical epidural steroid injection is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to a cervical epidural steroid injection 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, STE. 1050  
AUSTIN, TX 78701**

Signed this 6th day of July, 2009.

Jacquelyn Coleman  
Hearing Officer