

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 August 25, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a transforaminal epidural steroid injection (ESI) and selective nerve root injection at L4-L5 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RR, ombudsman.
Respondent/Carrier appeared, by telephone, and was represented by HF, assistant attorney general.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his cervical and lumbar spine on _____ after lifting a nuclear machine. An MRI performed on March 16, 2009 revealed a small central annular tear with very small protrusion without significant deformity of the thecal sac or spinal canal stenosis at L4-5. The Claimant testified that he continues to suffer from low back pain that radiates into his buttocks. Claimant testified that he did undergo an ESI to the cervical spine which provided him significant relief. Claimant's treating doctor has recommended a transforaminal ESI and selective nerve root injection at L4-L5 which was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a medical doctor board certified in anesthesiology with certification in pain management, upheld the previous adverse determination stating that the Official Disability Guidelines (ODG) state that radiculopathy should be demonstrated prior to considering a lumbar ESI and that radiculopathy has not been demonstrated in this case. The IRO reviewer concluded that the guidelines have not been met for a lumbar ESI and medical necessity has not been demonstrated for 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. 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 ODG. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

Pursuant to the *ODG* recommendations for ESI's, radiculopathy must be documented and objective findings on examination need to be present. The Claimant testified that his lumbar pain radiates into his buttocks and his treating doctors have diagnosed lumbar radiculopathy. However, these medical records and the lumbar MRI were reviewed by the IRO and the pre-authorization reviewers who all determined that the Claimant does not have clear evidence of lumbar radiculopathy. The Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. Therefore, Claimant has not met the requisite evidentiary standard required to overcome the IRO decision and the preponderance of the evidence is not contrary to the IRO decision that the Claimant is not entitled to a transforaminal ESI and selective nerve root injection at L4-L5 for the compensable injury of _____.

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 the (Self-Insured), Employer.
 - C. Claimant sustained a compensable injury to his lumbar spine 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. The Claimant failed to prove that he meets the requirements in the *ODG* for a transforaminal ESI and selective nerve root injection at L4-L5 and the requested procedure is not consistent with the recommendations in the *ODG*.
4. The requested transforaminal ESI and selective nerve root injection at L4-L5 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 transforaminal ESI and selective nerve root injection at L4-L5 is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a transforaminal ESI and selective nerve root injection at L4-L5 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 the (**SELF-INSURED**) and the name and address of its registered agent for service of process is:

AS, JR. P.E.
EXECUTIVE DIRECTOR
(SELF-INSURED)
(STREET ADDRESS)
(CITY), TX (ZIP CODE)

Signed this 25th day of August, 2009.

Carol A. Fougerat
Hearing Officer