

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 26, 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 bilateral L5-S1 transforaminal ESI under fluoroscopy for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SL ombudsman.
Respondent/Carrier appeared, by telephone, and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her lumbar spine on _____ when she pulled a stack of linens. An MRI performed on March 29, 2008 revealed multilevel lower lumbar spondylosis and an L5-S1 moderate broad central to left subarticular disc extrusion with moderate spinal canal stenosis. An EMG performed on June 17, 2008 did not suggest any evidence of radiculopathy or neuropathy. Claimant has undergone a work conditioning and pain management program, physical therapy and pain medications for treatment of her lumbar spine injury. Claimant's treating doctor recommended a bilateral L5-S1 ESI under fluoroscopy 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 specializing in physical medicine and rehabilitation, upheld the previous adverse determination stating that there is no objective data presented to support this requested procedure. The IRO reviewer noted that the appeal of Dr. V did not contain any substantive data to support altering the pre-authorization determination and that the request for the transforaminal ESI is not certified.

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 she has radiating pain into her lower extremity. The medical records do document radicular symptoms and the Claimant's treating doctors have opined that the Claimant does meet the *ODG* criteria for an L5-S1 ESI. However, the Claimant's treating doctors have not provided an explanation as to how the Claimant meets the *ODG* criteria other than merely stating that the Claimant has radiculopathy. The medical records which provide a diagnosis of radiculopathy, the lumbar MRI and the EMG 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 bilateral L5-S1 transforaminal ESI under fluoroscopy 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 (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. The requested procedure is not consistent with the recommendations in the *ODG* for a bilateral L5-S1 transforaminal ESI under fluoroscopy.

4. The requested bilateral L5-S1 transforaminal ESI under 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 L5-S1 transforaminal ESI under fluoroscopy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a bilateral L5-S1 transforaminal ESI under 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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TX 78701**

Signed this 26th day of August, 2009.

Carol A. Fougerat
Hearing Officer