

**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 August 3, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to bilateral L4 transforaminal epidural steroid injections for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by YG, Ombudsman.  
Respondent/Carrier was represented by RJ, attorney.

**BACKGROUND INFORMATION**

Claimant injured his elbow and spine on \_\_\_\_\_ during the course and scope of employment when he fell 30 feet to a concrete surface.

A magnetic resonance imaging (MRI) of Claimant's lumbar spine in May of 2003 showed a fracture at L3 as well as degenerative changes and canal narrowing at L4-5. In November of 2005, another MRI showed a disc bulge at L2-3 and post laminectomy changes at L4-5 and L5-S1. A third MRI in March of 2009 showed the fracture at L3, disc protrusion at L4-5, and a decrease in the size of the herniated disc at L4-5.

Dr. S performed transforaminal epidural steroid injections (ESIs) on Claimant at L4-5 in November of 2005, February of 2008, April of 2008, and August of 2008. By April of 2009, the doctor requested additional ESIs.

The IRO upheld the previous adverse determinations for the ESIs, explaining that the procedures were not supported by the *Official Disability Guidelines* (ODG). The IRO noted the lack of specific verifiable radiculopathy, limited changes in the MRIs, and the history of the injections.

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 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 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.

In pertinent part, the ODG has the following for ESIs:

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.

**Criteria for the use of Epidural steroid injections, therapeutic:**

- (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.

Claimant relied on Dr. S' letter of June 23, 2009 and a Benefit Dispute Agreement signed by the parties on February 12, 2008 to overcome the decision of the IRO. The agreement, which indicates that Claimant's compensable injury extends to radiculopathy and nerve root impingement at L4-5, does not meet the criteria for radiculopathy under the ODG. It is not corroborated by imaging studies or electrodiagnostic testing. Dr. S' letter does not overcome the decision of the IRO. The writing is often conclusory rather than explanatory. For example, Dr. S writes that the medical records document radiculopathy but he does not refer to specific records and does not discuss any MRI except the one in 2009. In addition, his letter is confusing because he writes about the need for a second ESI after the ESI in August 2008 without mentioning that Claimant had three injections prior to that one.

Claimant failed to present evidence based medicine to overcome the decision of the IRO. The preponderance of the evidence was not contrary to the decision of the IRO.

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, who was the employee of (Employer), sustained a compensable injury.
  - C. The Independent Review Organization determined that the requested services were not reasonable and necessary health care services for the compensable injury of \_\_\_\_\_.
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 did not meet the ODG criteria concerning documentation of radiculopathy for additional ESIs.
4. Bilateral L4 transforaminal epidural steroid injections are 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 Claimant is not entitled to bilateral L4 transforaminal epidural steroid injections for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to bilateral L4 transforaminal epidural steroid injections 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**(SELF-INSURED)**  
**TM**  
**(STREET ADDRESS)**  
**(CITY), TEXAS (ZIP CODE)**

Signed this 28th day of August, 2009.

CAROLYN F. MOORE  
Hearing Officer