

**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 September 24, 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 an L2-L3 and L3-L4 ESI 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 and left knee on \_\_\_\_\_ when she twisted to catch herself from falling. Claimant has undergone conservative care including physical therapy and pain medication. An MRI performed on August 11, 2008 revealed findings suggestive of multilevel pathology without any surgically significant pathology. An EMG performed on October 15, 2008 was normal. Claimant has undergone three ESI's to the L2-L3 and L3-L4 levels. The last ESI was performed on December 23, 2008. The Claimant testified that the ESI's provided relief for the pain symptoms she experiences above her waist but does not alleviate the lower extremity pain. Claimant's treating doctor has recommended a fourth ESI at L2-L3 and L3-L4 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 neurosurgeon, upheld the previous adverse determination stating that there was nothing on examination or EMG to indicate radiculopathy secondary to nerve root irritation or otherwise and that ESI's under these circumstances are frequently of no benefit. The IRO reviewer also noted that there appeared to be no significant benefit obtained from the previous ESI's.

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 experiences radiating pain into her lower extremities, however, the EMG performed on October 15, 2008 was normal and revealed no findings of acute or chronic lumbar radiculopathy. The Claimant's medical records were also reviewed by the IRO and the pre-authorization reviewers who all determined that the Claimant does not have clear evidence of lumbar radiculopathy. The *ODG* also recommends that repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response. The *ODG* recommends that initial blocks produce pain relief of at least 50-70% pain relief for at least 6-8 weeks. This is not documented in the Claimant's medical records subsequent to the prior injections. The Claimant's treating doctor's response to the IRO decision was that the *ODG* are only guidelines and these are not rules or laws. Claimant's treating doctor noted that the Claimant has gotten more than eight months of pain relief since the last injection, although the fourth injection was recommended in April 2009 which was only about three months post third injection.

The Claimant had the burden of proof to overcome the IRO determination and the Claimant failed to present an evidence-based medical opinion from a competent source to meet that burden. 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 an L2-L3 and L3-L4 ESI 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 to her 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 she meets the requirements in the *ODG* for an L2-L3 and L3-L4 ESI and the requested procedure is not consistent with the recommendations in the *ODG*.
  4. The requested L2-L3 and L3-L4 ESI 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 an L2-L3 and L3-L4 ESI is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to an L2-L3 and L3-L4 ESI 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 SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TX 78701**

Signed this 24th day of September, 2009.

Carol A. Fougerat  
Hearing Officer