MEDICAL CONTESTED CASE HEARING NO. 10058
M6-09-20955-01

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 Claimant is not entitled to lumbar epidural steroid injection (ESI) at L4-5 and L5-S1 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by YG, ombudsman.
Respondent/Carrier was represented by BJ, attorney.

BACKGROUND INFORMATION

Claimant was injured during the course and scope of employment on _____ when she held a patient to prevent the patient from falling. Claimant testified that she felt pain in her back and head immediately after she held the patient.

Dr. B began treating Claimant on _____, assessing a lumbar sacral strain and ordering physical therapy. From late March through April 18, 2009, he wrote that Claimant was improving. By April 28, he found that Claimant was not making progress and he referred Claimant to Dr. O for pain management.

On May 13, 2009, Dr. O recommended that Claimant have an ESI.

Carrier denied Claimant's requests for an ESI. An IRO upheld the adverse determination, relying on the *Official Disability Guidelines* (ODG). The IRO reviewer, a certified anesthesiologist who specializes in pain management, wrote that doctors had not documented that Claimant had radiculopathy and that Claimant's magnetic resonance imaging of April 9, 2009 did not show herniation of nucleus pulposus or nerve root compromise.

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.

The ODG states the following for ESI's:

> Recommended as a possible option for short-term treatment of radicular pain (defined as pain in dermatomal distribution with corroborative findings of radiculopathy) with use in conjunction with active rehab efforts. See specific criteria for use below. Radiculopathy symptoms are generally due to herniated nucleus pulposus or spinal stenosis, although ESIs have not been found to be as beneficial a treatment for the latter condition.
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> **Criteria for the use of Epidural steroid injections:**
> *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. Objective findings on examination need to be present. For unequivocal evidence of radiculopathy, see AMA Guides, 5th Edition, page 382-383. (Andersson, 2000)
> (2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).
> (3) Injections should be performed using fluoroscopy (live x-ray) and injection of contrast for guidance.
> (4) *Diagnostic Phase:* At the time of initial use of an ESI (formally referred to as the "diagnostic phase" as initial injections indicate whether success will be obtained with this treatment intervention), a maximum of one to two injections should be performed. A repeat block is not recommended if there is inadequate response to the first block (< 30% is a standard placebo response). A second block is also not indicated if the first block is accurately placed unless: (a) there is a question of the pain generator; (b) there was possibility of inaccurate placement; or (c) there is evidence of multilevel pathology. In these cases a different level or approach might be proposed. There should be 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) *Therapeutic phase:* If after the initial block/blocks are given (see "Diagnostic Phase" above) and found to produce pain relief of at least 50-70% pain relief for

at least 6-8 weeks, additional blocks may be required. This is generally referred to as the "therapeutic phase." Indications for repeat blocks include acute exacerbation of pain, or new onset of symptoms. The general consensus recommendation is for no more than 4 blocks per region per year. (CMS, 2004) (Boswell, 2007)
(8) Repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response.

(9) Current research does not support a routine use of a "series-of-three" injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections for the initial phase and rarely more than 2 for therapeutic treatment.
(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or sacroiliac blocks or lumbar 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. (Doing both injections on the same day could result in an excessive dose of steroids, which can be dangerous, and not worth the risk for a treatment that has no long-term benefit.)

Claimant presented a letter from Dr. O stating that Claimant's MRI showed a bulging disc at L4-5 and L5-S1 and that Claimant's pain was consistent with the findings on the MRI. He did not explain how Claimant met the ODG criteria for an ESI.

Claimant failed to present evidence based medicine to overcome 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 IRO determined that the requested service was not a reasonable and necessary health care service 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. A lumbar epidural steroid injection at L4-5 and L5-S1 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 IRO decision that a lumbar epidural steroid injection at L4-5 and L5-S1 is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to lumbar epidural steroid injection at L4-5 and L5-S1 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RON WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723

Signed this 13th day of October, 2009.

CAROLYN F. MOORE
Hearing Officer