

**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 December 16, 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 lumbar ESI at L5-S1 under fluoroscopy and IV sedation for the compensable injury of \_\_\_\_\_.

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his lumbar spine and left knee on \_\_\_\_\_. Claimant was initially diagnosed with a left knee strain and lumbar sprain. An MRI performed on March 6, 2009 revealed minimal anterolisthesis grade I at L5-S1 with facet degeneration and moderate canal and foraminal stenosis bilaterally. An EMG performed on July 9, 2009 did not suggest any radiculopathy or neuropathy. Claimant has undergone physical therapy and his treating doctor has recommended for an ESI at L5-S1 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 physician board certified in physical medicine and rehabilitation, upheld the previous adverse determination stating that ESI's are permitted for the treatment of radicular pain and objective evidence of radiculopathy. The IRO reviewer noted that there was no evidence of nerve root compression on the MRI or on the EMG, that the Claimant had no dermatomal sensory loss nor were there measurable muscle atrophy or abnormal reflexes as required by the *ODG* (Official Disability Guidelines) and the AMA Guides. The IRO reviewer concluded that the request was not medically necessary.

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. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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. In response to the IRO's recommendation, the Claimant's treating doctor opined that the Claimant has a straight leg response at L5-S1 to the left with diminished sensation and strength. The Claimant's treating doctor concluded that the *ODG* recommendations were met and that the Claimant has already performed physical therapy and medications which did not help the Claimant's lumbar pain. The Claimant's treating doctor noted that the Claimant had signs of radiculopathy on every single evaluation; however, the doctor failed to address the objective diagnostic studies which revealed no evidence of radiculopathy. Without documented, objective evidence of radiculopathy, the criteria for ESIs, as set forth in the ODG, has not been met.

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 Claimant had the burden of proof to overcome the IRO determination and the Claimant failed to present objective evidence of radiculopathy and the preponderance of the evidence is not contrary to the IRO decision that the Claimant is not entitled to a lumbar ESI at L5-S1 under fluoroscopy and IV sedation 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 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 an L5-S1 ESI under fluoroscopy and IV sedation and the requested procedure is not consistent with the recommendations in the *ODG*.
  4. The preponderance of the evidence is not contrary to the decision of the IRO that the requested L5-S1 ESI under fluoroscopy and IV sedation 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 the Claimant is not entitled to a lumbar ESI at L5-S1 under fluoroscopy and IV sedation for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to a lumbar ESI at L5-S1 under fluoroscopy and IV sedation 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 **OLD REPUBLIC GENERAL 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 16th day of December, 2009.

Carol A. Fougerat  
Hearing Officer