MEDICAL CONTESTED CASE HEARING NO. 10102
M6-09-19279-01

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 January 7, 2010 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to cervical and lumbar epidural steroid injections for the compensable injury of _____?

Upon agreement of the parties, the issue was revised as follows:

> Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to cervical epidural steroid injections for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared by telephone and was represented by LE, attorney. Petitioner/Provider/Owner of (Healthcare Provider), Dr. KB, appeared by telephone as a witness in this matter. Respondent/Self-insured Carrier appeared and was represented by ST, attorney.

BACKGROUND INFORMATION

Claimant sustained a cervical and lumbar injury on _____ when she fell from a ladder. Claimant underwent physical therapy and received medications for her injuries. Claimant was referred to Dr. KB for an orthopedic consultation on February 6, 2009. Dr. KB indicated that he did not feel that the claimant had an operative problem. However, he did recommend epidural steroid injections for the cervical and lumbar spine.

After Dr. KB requested pre-authorization for the injections, two utilization reviews were conducted. Both utilization reviews denied the request because the medical records did not reveal any objective evidence of radiculopathy. Both URA's stated that there was no evidence of radiculopathy in the clinical exam note dated February 6, 2009 and both stated that the cervical EMG dated June 10, 2008 was normal. Dr. KB appealed the carrier's decision to an IRO. The IRO upheld the carrier's denial and provided the same reason, no objective evidence of radiculopathy. The IRO also noted that the claimant had previously undergone a lumbar epidural steroid injection at L5-S1 on October 1, 2008 which did not provide any relief.

Dr. KB appealed the decision of the IRO to a Medical Contested Case Hearing. At the Medical Contested Case Hearing, Dr. KB stated that he agreed that the evidence did not support a lumbar epidural steroid injection and stated that he was no longer pursing an injection for the lumbar

spine. Therefore, the parties agreed to modify the issue and litigate the necessity of the cervical epidural injection only.

DISCUSSION

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. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is 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. (Division Rule 133.308 (t).)

With regard to epidural steroid injections, the ODG provides as follows:

> 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. In a recent Cochrane review, there was one study that reported improvement in pain and function at four weeks and also one year in individuals with chronic neck pain with radiation. (Peloso-*Cochrane*, 2006) (Peloso, 2005) Other reviews have reported moderate short-term and long-term evidence of success in managing cervical radiculopathy with interlaminar ESIs. (Stav, 1993) (Castagnera, 1994) Some have also reported moderate evidence of management of cervical nerve root pain using a transforaminal approach. (Bush, 1996) (Cyteval, 2004) A recent retrospective review of interlaminar cervical ESIs found that approximately two-thirds of patients with symptomatic cervical

radiculopathy from disc herniation were able to avoid surgery for up to 1 year with treatment. Success rate was improved with earlier injection (< 100 days from diagnosis). (Lin, 2006) There have been recent case reports of cerebellar infarct and brainstem herniation as well as spinal cord infarction after cervical transforaminal injection. (Beckman, 2006) (Ludwig, 2005) Quadriparesis with a cervical ESI at C6-7 has also been noted (Bose, 2005) and the American Society of Anesthesiologists Closed Claims Project database revealed 9 deaths or cases of brain injury after cervical ESI (1970-1999). (Fitzgibbon, 2004) These reports were in contrast to a retrospective review of 1,036 injections that showed that there were no catastrophic complications with the procedure. (Ma, 2005) The American Academy of Neurology recently concluded that epidural steroid injections may lead to an improvement in radicular lumbosacral pain between 2 and 6 weeks following the injection, but they do not affect impairment of function or the need for surgery and do not provide long-term pain relief beyond 3 months, and there is insufficient evidence to make any recommendation for the use of epidural steroid injections to treat radicular cervical pain. (Armon, 2007) There is evidence for short-term symptomatic improvement of radicular symptoms with epidural or selective root injections with corticosteroids, but these treatments did not appear to decrease the rate of open surgery. (Haldeman, 2008) See the Low Back Chapter for more information and references.

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

Dr. KB testified that the claimant met the criteria for a therapeutic cervical epidural steroid injection at C3-C4, C4-C5, and C6. Dr. KB stated that the cervical MRI revealed disc bulges at all three levels and physical examination revealed radiculopathy based on the dermatomal distribution. However, Dr. KB did not explain how his exam revealed a certain dermatomal distribution nor is it explained in his only medical record in evidence dated February 26, 2009. Dr. KB testified that the EMG indicated that there was evidence of nerve root irritation at C6 and C8. Dr. KB also testified that even if the EMG were negative, a negative result would not completely rule out radiculopathy.

Dr. DG testified on behalf of the Respondent/Self-insured Carrier. Dr. G performed the initial utilization review and stated that it remained his opinion that the ODG criteria for a cervical epidural steroid injection had not been met. Dr. G testified that based on his review of the medical records, the clinical exams did not reveal findings consistent with radiculopathy. Dr. G also testified that although the doctor that performed the EMG lists nerve root irritation as his conclusion, this finding is not consistent with the actual EMG results which were all reported as normal.

After a thorough review of all the evidence presented, including the testimony of both experts, Claimant has not met the criteria of radiculopathy that is required by the ODG. Claimant has not shown by a preponderance of evidence-based medicine that the requested cervical epidural steroid injection is health care reasonably required for the compensable injury.

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 _____.

   D. The IRO determined that the Claimant should not have cervical and lumbar epidural steroid injections.

2. Self-insured 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 cervical epidural steroid injection 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 cervical epidural steroid injection is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a cervical epidural steroid injection 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:

CORPORATION SERVICE COMPANY
701 BRAZOS STREET, STE. 1050
AUSTIN, TX 78701

Signed this 13th day of January, 2010.

Jacquelyn Coleman
Hearing Officer