

MEDICAL CONTESTED CASE HEARING NO. 10133

M6-10-22235-01

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 February 22, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to cervical epidural steroid injections (ESI's) x 3 at two week intervals for the compensable injury of _____?

The record closed on February 24, 2010, after receipt of March 19, 2003, and October 2, 2000, EMG reports.

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by ombudsman NW. Carrier appeared and was represented by attorney JG.

BACKGROUND INFORMATION

Claimant was the only witness at the February 22, 2010, CCH. Claimant testified that on _____, she was attempting to load recalled lawnmowers and when a coworker dropped his end, she felt a loud pop. Dr. S has requested cervical epidural steroid injections to reduce pain and inflammation.

Carrier denied the request, and denied the request for reconsideration. On September 13, 2009, an IRO upheld Carrier's denial.

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 is considered a party 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."

In the instant case, the IRO, citing the *ODG*, noted that the *ODG* 2009 Cervical Spine Chapter epidural steroid passage requires the presence of radiculopathy for authorization to perform steroid injections, and "Such evidence of radiculopathy is not currently present." The IRO reviewer noted, "Although an EMG/nerve conduction study performed in 2003 suggested C6 and C7 radiculopathies on the right side, there is no current physical examination or electrodiagnostic study to suggest radiculopathy." On November 17, 2009, Dr. G evaluated Claimant and performed electrodiagnostic studies. Dr. G noted that the EMG examination appeared to be essentially within normal limits which appeared to be a significant change compared to her previous EMG on March 19, 2003.

Under the Official Disability Guidelines in reference to a cervical epidural steroid injection, the following recommendation is made:

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.

As for the cervical ESI, the recommendations in the *ODG* require that radiculopathy must be documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing. Claimant's medical records fail to show Claimant has documented radiculopathy and therefore the request is not consistent with the recommendations in the *ODG*. Based on the evidence presented, Claimant did not meet her burden to present evidence based medicine evidence contrary to the IRO's determination.

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) and sustained a compensable injury.
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 Independent Review Organization determined Claimant should not have cervical epidural steroid injections (ESI's).
4. Cervical epidural steroid injections (ESI's) 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 Claimant is not entitled to cervical epidural steroid injections (ESI's) x 3 at two week intervals for the compensable injury of _____?

DECISION

Claimant is not entitled to cervical epidural steroid injections (ESI's) x 3 at two week intervals 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 PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION**, and the name and address of its registered agent for service of process is:

**TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION
9120 BURNET ROAD
AUSTIN, TEXAS 78758**

Signed this 1st day of March, 2010

Cheryl Dean
Hearing Officer