

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 April 20, 2010 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 epidural steroid injection (ESI) at L3-4 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by AC, ombudsman.
Respondent/Carrier appeared and was represented by TW, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his lumbar spine _____. The Claimant testified that he had an injection performed by a doctor in (City), (Country) in May 2009 but he was not sure if the injection was cortisone or steroid and that he only received about four days of relief from that injection. Claimant began treating with Dr. U in June 2009 and an MRI of the lumbar spine was performed on July 10, 2009. The MRI revealed an L4-5 central disc protrusion with moderate to severe central canal stenosis. Dr. U has requested an L3-4 ESI as a diagnostic evaluation to determine the etiology of the pain generator, as well as, therapeutic in alleviating the Claimant's pain. The request for a lumbar ESI at L3-4 was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a board certified orthopedic surgeon, upheld the previous adverse determination stating that the Official Disability Guidelines (ODG) criteria for consideration of treatment using epidural steroid injection must include unequivocal evidence of radiculopathy and that "objectified evidence" must be present on examination. The IRO reviewer noted the medical evidence fails to document such unequivocal evidence of clinical radiculopathy and that the Claimant has no documented muscle atrophy and no loss of reflex in the lower extremities. The IRO reviewer also noted that the MRI report suggests pathology at L4-5, yet the request for an ESI is at the L3-4 level. 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. The medical records fail to document objective evidence of radiculopathy. Without documented, objective evidence of radiculopathy, the criteria for ESIs, as set forth in the ODG, has not been met. In a report dated January 25, 2010, Dr. U explains that the spinal canal stenosis that has caused the L4-5 level will be treated by injecting the medicine one level above and allowing it to trickle down to the area of compression to be more efficacious for the Claimant. Dr. U states that this is a standard procedure done by spine surgeons to be both diagnostic and therapeutic. Dr. U concludes that since all the criteria that is actual and real from this patient [Claimant] has met the ODG, the injection should be approved. Dr. U's records note lower extremity radicular symptoms of fatigue and tightness, however, Dr. U does not provide a diagnosis of radiculopathy nor do his physical exam findings document objective evidence of radiculopathy. The Claimant has the burden of proof to overcome the IRO determination and the Claimant failed to present an evidence based medical opinion contrary to the determination of the IRO that the Claimant is not entitled to a lumbar ESI at L3-4 for treatment of 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 a lumbar ESI at L3-4 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 lumbar ESI at L3-4 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 L3-4 for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar ESI at L3-4 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 **NEW HAMPSHIRE INSURANCE COMPANY** 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 20th day of April, 2010.

Carol A. Fougerat
Hearing Officer