

**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.

**ISSUE**

A contested case hearing was held on April 12, 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 ESI at C4-C5 for the compensable injury sustained on \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner, Dr. B appeared without representation. Claimant appeared and was represented by AP, attorney. Respondent/Carrier appeared and was represented by SS, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his cervical spine on \_\_\_\_\_ when he was employed as a (Employer) unloading footlockers. Claimant was hospitalized subsequent to the injury for four days. Claimant testified that he has pain in the neck and upper back. Claimant was examined by Dr. C on May 27, 2009 who found normal range of motion in the cervical spine on examination and diagnosed him with a cervical strain/sprain. A required medical examination was done by Dr. O who diagnosed him with Spinal Stenosis and noted that the claimant is not a surgical candidate. Claimant underwent an MRI of the cervical spine on September 30, 2008 which revealed degenerative disc changes with spinal stenosis at C4-C5 and lesser amounts of discal abnormalities at C2-C3, C3-C4 and C5-C6. A cervical myelogram done on \_\_\_\_\_ demonstrated at C4-C5 there is left central canal stenosis and perhaps slight left foraminal stenosis. Claimant testified that he has undergone physical therapy and pain medication but neither has improved his neck pain.

On October 8, 2009 Claimant was examined by Dr. B who diagnosed the claimant with multiple bulges of the cervical spine with radiculopathy. Claimant underwent an EMG of the upper extremities on October 23, 2009 by KR, a chiropractor who was not certified by the Electrodiagnostic Association or by a certified laboratory as required. There is no clear documentation of conservative therapy in the medical records. Claimant's treating doctors including Dr. M and Dr. B have given clinical diagnoses of radiculopathy and Dr. B has recommended ESI at C4-C5. This request 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 noting that evidence-based literature suggests that cervical epidural steroid injections should be reserved for individuals who have clear evidence of radiculopathy and have failed conservative care. The IRO concluded that the Claimant does not meet the criteria set

forth by the *Official Disability Guidelines* for the use of an ESI. The IRO reviewer stated as follows:

"In this particular case, the imaging study report shows nothing more than degenerative disc changes and mild foraminal stenosis at C4-5, the level of concern. Furthermore, the physical exam findings do not specifically identify signs that would show conclusive evidence of radiculopathy."

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. Section 401.011(22-a) defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by Section 401.011(18-a) as 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 making decisions about the care of individual patients.

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*.

Pursuant to the *Official Disability Guidelines* for 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.

Criteria for the use of Epidural steroid injections, diagnostic:

To determine the level of radicular pain, in cases where diagnostic imaging is ambiguous, including the examples below:

(1) To help to evaluate a pain generator when physical signs and symptoms differ from that found on imaging studies;

(2) To help to determine pain generators when there is evidence of multi-level nerve root compression;

(3) To help to determine pain generators when clinical findings are suggestive of radiculopathy (e.g. dermatomal distribution) but imaging studies are inconclusive;

(4) To help to identify the origin of pain in patients who have had previous spinal surgery.

The Claimant testified that he has undergone physical therapy and pain medications which have not alleviated his symptoms. The medical records document subjective complaints of symptoms; however, there does not appear to be evidence of motor or sensory deficits on clinical examinations and the EMG performed was not done by a certified examiner. The ODG criteria specifically require that radiculopathy be documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing by a certified examiner. The Claimant does not meet the criteria pursuant to the *ODG* for an ESI and did not show that he would benefit from an ESI before a surgical consultation. The Claimant's treating doctors fail to specifically explain how the Claimant meets the *ODG* criteria for an ESI. Based on the evidence presented, the Claimant failed to present evidence-based medical opinion to overcome the IRO's decision and the preponderance of the evidence is not contrary to the IRO's determination.

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 \_\_\_\_\_.
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. Claimant does not meet the criteria for an ESI at C4-C5 as set forth in the *ODG*.

4. The requested ESI at C4-C5 and fluoroscopy 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 an ESI at C4-C5 is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to an ESI at C4-C5 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 **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TX 75201**

Signed this 13<sup>th</sup> day of April, 2010.

Susan Meek  
Hearing Officer