

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 July 30, 2010 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to cervical epidural steroid injection for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman. Respondent/Self-Insured appeared and was represented by TW, attorney.

BACKGROUND INFORMATION

Claimant worked for the Employer as a fire fighter. On _____ he sustained a compensable injury when he was pulling himself up into a fire truck. The Division earlier determined that the compensable injury extends to include cervical radiculopathy and a 4 mm posterior disc extrusion at C6-7 but does not extend to include cervical spondylosis or a left shoulder rotator cuff tear. Dr. C requested approval for a cervical epidural steroid injection (ESI). The IRO doctor, board certified in family practice with a certificate of added qualification in sports medicine, upheld the previous denials of the request.

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."

The ODG provides the following criteria for cervical epidural steroid injections:

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.

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 IRO doctor observed that the clinical notes indicated the ESI was requested for therapeutic and not diagnostic reasons and concluded Claimant did not meet the first two criteria for a therapeutic ESI:

- (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).

Claimant testified his neck hurts. He has not had any conservative treatment to meet ODG criterion 2 beyond two sessions of physical therapy he attended out of a series of 12. He had an MRI done June 3, 2008. A report from Dr. M (a treating doctor) dated June 8, 2008 states the MRI “demonstrates no evidence of specific cord or nerve root compromise to explain (Claimant’s) symptoms”. Claimant has not had an upper extremities electrodiagnostic study. There was a letter from Dr. C that says Claimant has radiculopathy. The letter also says Claimant “has had no treatment on his neck to speak of”.

There was no credible evidence Claimant met the ODG criteria for the requested ESI and no evidence based medical evidence to rebut the ODG criteria. Claimant is not entitled to the requested treatment.

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 (Self-Insured), Employer.
 - C. On _____ Claimant sustained a compensable injury.
 - D. The Independent Review Organization determined Claimant should not have the requested treatment.
2. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured, and the name and street address of Self-Insured’s registered agent, which document was admitted into evidence as Hearing Officer’s Exhibit Number 2.
3. 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 cervical epidural steroid injection is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to cervical epidural steroid injection for the compensable injury of _____.

ORDER

Self-Insured is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021 of the Act.

The true corporate name of the insurance Self-Insured is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is

**CITY SECRETARY
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 30th day of July, 2010.

Thomas Hight
Hearing Officer