

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 August 10, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to one caudal injection for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RR, ombudsman.
Respondent/Carrier was represented by JF, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury to his lumbar spine when he slipped and fell backwards onto his buttocks. In 2003, Claimant underwent a fusion to his lumbar spine, with instrumentation, from L4 to S1. On October 31, 2007, Claimant underwent another surgery to his lumbar spine to repair a fractured screw. Claimant continued to seek medical treatment and receive medication for his ongoing symptoms. Claimant acknowledged that he is not currently participating in a physical therapy program either at a facility or home. Claimant testified that he continues to have pain as a result of the compensable injury and that a caudal injection has been recommended by his treating physician. The request for a caudal injection at L5-S1 was denied by the Carrier/Respondent (Carrier) and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, specializing in orthopedic surgery, provided a detailed understanding of the Claimant's medical history and noted the treating physician's April 30, 2010 notation of lower extremity radicular pain. The reviewer acknowledged that Claimant suffers from chronic issues as a result of the compensable injury. However, he further noted that the requested injection was "not medically necessary and noted that there did not appear to be clear evidence of neurologic deficits." He further opined that some of the physical findings documented by the treating physician could be present indefinitely, after surgical intervention, and did not necessarily suggest active 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. 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."

It should be noted that caudal injections are not separately listed under the *ODG*, but are recognized under the low back provisions dealing with epidural steroid injections. The *ODG* recognizes the use of epidural injections and state:

Criteria for the use of Epidural steroid injections:

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. Objective findings on examination need to be present. For unequivocal evidence of radiculopathy, see AMA Guides, 5th Edition, page 382-383. (Andersson, 2000)

(2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).

(3) Injections should be performed using fluoroscopy (live x-ray) and injection of contrast for guidance.

(4) *Diagnostic Phase:* At the time of initial use of an ESI (formally referred to as the "diagnostic phase" as initial injections indicate whether success will be obtained with this treatment intervention), a maximum of one to two injections should be performed. A repeat block is not recommended if there is inadequate response to the first block (< 30%

is a standard placebo response). A second block is also not indicated if the first block is accurately placed unless: (a) there is a question of the pain generator; (b) there was possibility of inaccurate placement; or (c) there is evidence of multilevel pathology. In these cases a different level or approach might be proposed. There should be 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) *Therapeutic phase:* If after the initial block/blocks are given (see “Diagnostic Phase” above) and found to produce pain relief of at least 50-70% pain relief for at least 6-8 weeks, additional blocks may be required. This is generally referred to as the “therapeutic phase.” Indications for repeat blocks include acute exacerbation of pain, or new onset of symptoms. The general consensus recommendation is for no more than 4 blocks per region per year. (CMS, 2004) (Boswell, 2007)

(8) Repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response.

(9) Current research does not support a routine use of a “series-of-three” injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections for the initial phase and rarely more than 2 for therapeutic treatment.

(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or sacroiliac blocks or lumbar 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. (Doing both injections on the same day could result in an excessive dose of steroids, which can be dangerous, and not worth the risk for a treatment that has no long-term benefit.)

Pursuant to the *ODG* recommendations for the epidural injection, radiculopathy must be documented and objective findings on examination need to be present. In response to the carrier’s denial of the requested treatment, Claimant’s treating doctor noted in a medical report that the Claimant had “very clear” radicular symptoms. However, the Claimant’s treating doctor failed to explain how the *ODG* recommendations were satisfied. Without documented objective evidence of radiculopathy, the criteria for the requested caudal injection, as set forth in the *ODG*, have not been met. The Claimant’s medical records were reviewed by the IRO and the pre-authorization reviewers who all determined that the Claimant does not have clear evidence of lumbar radiculopathy. The Claimant had the burden of proof to overcome the IRO determination and the Claimant failed to present objective evidence of radiculopathy and the preponderance of the evidence is not contrary to the IRO decision that the Claimant is not entitled to a caudal injection for 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 the 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 IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.
 4. The *ODG* requires, among other findings, a showing of radiculopathy documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing.
 5. Claimant failed to establish the finding of radiculopathy as a result of the compensable injury sustained on _____.
 6. The one caudal 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 Claimant is not entitled to one caudal injection for the compensable injury of _____.

DECISION

Claimant is not entitled to one caudal 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 **PACIFIC EMPLOYERS INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 16th day of August, 2010.

Teresa G. Hartley
Hearing Officer