

**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 4, 2010 with the record closing on August 16, 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 bilateral transforaminal cervical epidural steroid injection (ESI) at C6-C7 with epidurography, fluoroscopy and IV sedation for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by MH, ombudsman.  
Respondent/Carrier appeared and was represented by BR, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his cervical spine on \_\_\_\_\_ while working as a truck driver. Claimant underwent a physical therapy program and was referred for an MRI of the cervical spine which revealed a Chiari malformation with no evidence of cord syrinx, an annular bulge at C4-C5 with mild foraminal narrowing, a diffuse disc bulge at C5-C6 with bilateral foraminal narrowing and a 3mm disc bulge at C6-C7 flattening the thecal sac with mild narrowing of the left neural foramen. Claimant has undergone treatment in the form of physical therapy and prescription medications and he has been recommended to undergo a cervical ESI at C6-C7 which was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a physician board certified in physical medicine and rehabilitation, upheld the previous adverse determination citing the ODG (Official Disability Guidelines) which state, in order to meet the criteria for use of ESI's, a radiculopathy must be documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing and there must be evidence of an initial unresponsiveness to conservative treatment. The IRO reviewer noted that the records show no evidence of radiculopathy as defined in the AMA Guides; the Spurling's sign is negative, deep tendon reflexes, sensation and strength were repeatedly described as being normal, and that there was no physical examination evidence of radiculopathy. Additionally, electrodiagnostic studies were normal and did not confirm the presence of radiculopathy. The IRO reviewer concluded that the request for a cervical ESI 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. In response to the denials for the recommended cervical ESI, the Claimant's treating doctor, Dr. D, wrote, in a report dated January 11, 2010, that the Claimant did meet the ODG criteria and that the Claimant was having "radicular-type pain unresponsive to conventional noninvasive treatments such as physical therapy, rehabilitation and the use of medication for more than four weeks." Dr. D opined that this is the simplest and least invasive procedure for discogenic and radicular derived pain which he states is based on the research that chemical and mechanical inflammation of the nerve roots results in most neck and upper extremity pain. Dr. D stated that the levels have been selected after careful evaluation of the Claimant's diagnostic studies, as well as, detailed physical examination. However, Dr. D did not comment on the IRO's concerns regarding the lack of clinical correlation and physical findings of radiculopathy and the reportedly normal EMG of the upper extremities, which not available for review but was referred to in the medical records. Without documented, objective evidence of radiculopathy, the criteria for an ESI, as set forth in the ODG, has 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 cervical radiculopathy. The Claimant had the burden of proof to overcome the IRO determination and the Claimant failed to

present objective evidence of radiculopathy therefore, the Claimant does not meet the ODG criteria for a cervical ESI. The Claimant also failed to present evidence-based medicine sufficient to overcome the determination of the IRO regarding the necessity for a cervical ESI. The preponderance of the evidence presented is not contrary to the IRO decision that the Claimant is not entitled to a bilateral transforaminal cervical ESI at C6-C7 with epidurography, fluoroscopy and IV sedation 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 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 bilateral transforaminal cervical ESI at C6-C7 with epidurography, fluoroscopy and IV sedation and the requested procedure is not consistent with the recommendations in the ODG.
4. The Claimant failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
5. The requested bilateral transforaminal cervical ESI at C6-C7 with epidurography, fluoroscopy and IV sedation 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 a bilateral transforaminal cervical ESI at C6-C7 with epidurography, fluoroscopy and IV sedation is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to a bilateral transforaminal cervical ESI at C6-C7 with epidurography, fluoroscopy and IV sedation 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 CO.** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7<sup>th</sup> STREET, SUITE 620  
AUSTIN, TX 78701-3218**

Signed this 16th day of August, 2010.

Carol A. Fougerat  
Hearing Officer