

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 begun on April 19, 2011 and concluded on May 3, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to a lumbar epidural steroid injection on the right at L4-5 and L5-S1 for the compensable injury of _____?

Between April 19, 2011 and May 3, 2011, the parties determined that the Division had incorrectly listed National Fire Insurance Company of Hartford as Respondent/Carrier and determined that Continental Casualty Company was the correct Respondent/Carrier.

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman.

Respondent/Carrier was represented by JC, attorney.

BACKGROUND INFORMATION

Claimant testified that he had surgery in June of 2002 after being injured during the course and scope of employment in _____. He said that after the surgery, he could not move his left leg. Twenty-eight days after the first surgery, he had a second surgery. He said that he still has a sharp pain from the groin down the leg, burning sensations in the leg, back pain, and numbness. He said that previous epidural steroid injections, given 2 or 3 times a year, have taken away his discomfort. He stated that the last time he had an injection was in 2009.

According to documentary evidence, the Independent Review Organization upheld previous adverse determinations concerning the request for Claimant to have epidural steroid injections. The determination was based on the *Official Disability Guidelines* (ODG). The doctor writing for the IRO noted that he or she was a medical doctor with 15 years of experience and held a board certification in physical medicine and rehabilitation. The doctor noted that two criteria of the ODG were not listed in the many medical records submitted for review. The medical records did not show corroboration of radiculopathy by testing and did not show conservative treatment, such as medications, therapy, or home exercise.

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 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 for epidural steroid injections, therapeutic:

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, reduction of medication use 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. Radiculopathy must be 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) 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 supported. This is generally referred to as the “therapeutic phase.” Indications for repeat blocks include acute exacerbation of pain, or new onset of radicular 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.)

Claimant failed to present evidence based medical evidence to show that he met the criteria listed in the ODG for the requested epidural steroid injection, particularly concerning the criteria mentioned by the IRO. Claimant did not present evidence based medical evidence that was contrary to the decision of the IRO.

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, who was the employee of (Employer) sustained a compensable injury.
 - C. The Independent Review Organization determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.
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. A lumbar epidural steroid injection on the right at L4-5 and L5-S1 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 Independent Review Organization that a lumbar epidural steroid injection on the right at L4-5 and L5-S1 is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar epidural steroid injection on the right at L4-5 and L5-S1 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 **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

Signed this 9th day of May, 2011.

CAROLYN F. MOORE
Hearing Officer