

MEDICAL CONTESTED CASE HEARING NO 11151
M6-11-31741-01

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 June 23, 2011, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is entitled to one outpatient lumbar epidural steroid injection (ESI) at L5/S1 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Carrier appeared and was represented by JT, attorney. Claimant appeared and was assisted by NT, ombudsman. Respondent failed to appear for the contested case hearing and did not respond to the Division's 10-day letter.

BACKGROUND INFORMATION

Although properly notified, Respondent failed to appear for the contested case hearing scheduled for 9:00 on June 23, 2011. A letter advising the hearing had convened and the record would be held open for ten days to afford Respondent the opportunity to respond and request the hearing be rescheduled to permit it to present evidence on the disputed issues was mailed to Respondent on June 23, 2011. Respondent failed to respond to the Division's 10-day letter and, on June 23, 2011, the record was closed. Having failed to appear and offer evidence in support of its claim, Respondent failed to show it is entitled to the relief it seeks.

Claimant sustained a compensable injury on (Date of Injury), when she slipped and fell in the dining room at the (Self-Insured Employer). She injured her right knee, right ankle and low back. She has undergone two knee surgeries and has had one lumbar ESI. Claimant's doctor requested a second ESI because Claimant had a positive response to the first ESI. Carrier denied the request. The IRO doctor agreed with Claimant's doctor and opined Claimant should have the injection. The IRO doctor supported that opinion by stating there must be documentation of radiculopathy and the radiculopathy "may have been present, but not documented" before the first injection. The IRO doctor then noted there were no EMG findings of radiculopathy, no muscle atrophy, and inconclusive muscle weakness. The IRO doctor then stated, "If we presume that the radiculopathy was previously established, one would need to discuss the justification for

a second ESI.” The IRO doctor then noted Claimant had 70% pain relief for 6 weeks and met the minimal requirements for a second ESI.

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. 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. (Division Rule 133.308 (t).)

Under the Official Disability Guidelines in reference to lumbar ESIs, the following recommendation is made:

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.)

The medical evidence does not support the IRO doctor's opinion. As the IRO doctor noted, the physical examinations do not indicate objective findings of radiculopathy. Neither the MRI nor EMG show any indications of radiculopathy. The IRO doctor supported an opinion relying upon a presumption of radiculopathy.

Carrier had the burden of proof to overcome the IRO determination. Carrier presented expert medical opinions based upon the Official Disability Guidelines challenging the IRO doctor's opinion. The opinions of the Carrier's experts disputing the medical necessity for the ESI note the lack of objective findings of radiculopathy in the medical records and are supported by the preponderance of the evidence-based medical evidence. Claimant is not entitled to one outpatient lumbar ESI at L5/S1 for the compensable injury of (Date of Injury).

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 (Date of Injury), Claimant was the employee of the (Self-Insured), Employer.
 - C. On (Date of Injury), Claimant sustained a compensable injury.
 - D. On (Date of Injury), Employer provided workers' compensation insurance as a Self-Insurer.
 - E. The Independent Review Organization determined Claimant should have one outpatient lumbar ESI at L5/S1.
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. One outpatient lumbar ESI at L5/S1 is not health care reasonably required for the compensable injury of (Date of Injury).

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 contrary to the decision of the IRO that one outpatient lumbar ESI at L5/S1 is health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to one outpatient lumbar ESI at L5/S1 for the compensable injury of (Date of Injury).

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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

For service in person, the address is:

(SELF-INSURED)
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

For service by mail, the address is:

(SELF-INSURED)
(P.O. BOX)
(CITY), TEXAS (ZIP CODE)

Signed this 24th day of June, 2011.

Ken Wrobel
Hearing Officer