

MEDICAL CONTESTED CASE HEARING NO 12025  
M6-11-35660-01

**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 October 3, 2011, 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 a left L4-5 lumbar epidural steroid injection for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by MP, ombudsman. Respondent/Carrier appeared and represented by GP, adjuster.

**BACKGROUND INFORMATION**

Claimant, a truck driver, sustained a compensable lumbar injury on (Date of Injury). Claimant testified that he came under the care of GS, M.D., and underwent a regimen of physical therapy and was prescribed pain medication. Claimant has not undergone surgery for the compensable injury. Claimant did not return to work after his injury and continued to experience ongoing lumbar pain. Dr. S referred Claimant to AA, M.D., and recommended that Claimant undergo a lumbar MRI and an EMG/NCV study. The MRI and EMG/NCV did not reveal lumbar radiculopathy. Dr. A examined Claimant and opined that Claimant should undergo a left L4-5 lumbar epidural steroid injection (ESI) for the compensable injury. Carrier denied Claimant's request and Claimant requested an IRO review of Carrier's denial.

**DISCUSSION**

Texas Labor Code §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 §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 in making decisions about the care of individual patients. 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 §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 §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."

With regard to therapeutic ESIs, the ODG provides as follows:

**"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 IRO reviewer was identified as a medical doctor who was a board certified anesthesiologist. The IRO reviewer upheld Carrier’s denial and determined that a left L4-5 lumbar ESI was not health care reasonably required for Claimant’s compensable injury. The IRO reviewer noted that the ODG criteria for an ESI required that there must be documented radiculopathy. The IRO reviewer noted that the medical records that were reviewed indicated Claimant’s physical examinations did not establish the presence of active lumbar radiculopathy, and that the MRI and EMG/NCV did not support the diagnosis of radiculopathy. Claimant appealed the IRO decision. Claimant was the sole witness on his behalf. Claimant testified about the events surrounding his compensable injury, the course of treatment that he had received, and that he supported the recommendation of Dr. A that he undergo the left L4-5 ESI. Under MCCH No. 01120, Claimant’s lay testimony is not probative on a question requiring expert evidence. Based on the

evidence, Claimant did not meet his burden of proof of overcoming the IRO decision by a preponderance of evidence-based medical evidence. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to a left L4-5 lumbar ESI 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 (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance with New Hampshire Insurance Company, Carrier.
  - D. Claimant sustained a compensable lumbar injury on (Date of Injury).
  - E. The Independent Review Organization (IRO) determined that Claimant is not entitled to a left L4-5 lumbar epidural steroid injection for the compensable injury of (Date of Injury).
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 requested left L4-5 lumbar epidural steroid injection 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 not contrary to the decision of the Independent Review Organization (IRO) that a left L4-5 lumbar epidural steroid injection is not health care reasonably required for Claimant's compensable injury of (Date of Injury).

## **DECISION**

Claimant is not entitled to a left L4-5 lumbar epidural steroid injection 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 of (Date of Injury), in accordance with Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET. SUITE 620  
AUSTIN, TEXAS 78701-3218**

Signed this 3rd day of October, 2011.

Wes Peyton  
Hearing Officer