

MEDICAL CONTESTED CASE HEARING NO 12051
M6-12-35783-01

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 November 9, 2011 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 transforaminal injection at right L4 under anesthesia with fluoroscopic guidance for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by AG, attorney.
Respondent/Carrier appeared and was represented by MS, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his lumbar spine on (Date of Injury) when a high pressure hose hit him in the low back. Claimant underwent an MRI of the lumbar spine on October 28, 2009 which revealed an annular tear and a 5mm diffused herniation at L3-4, and a 6mm diffuse disc herniation with encroachment of both neural foramina more prominent on the right at L4-5. He underwent an EMG/NCV on December 1, 2009 which showed acute right L4 radiculopathy. The Claimant testified that he had three months of physical therapy and pain medications as treatment of his lumbar injury and that he continues to suffer from low back pain that radiated into the right leg. On April 1, 2011 Claimant began to treat with to Dr. JK. Dr. K recommended a lumbar epidural steroid injection (ESI). This request was twice denied by the Carrier on the grounds that there has been no comprehensive assessment of treatment or Claimant's response to treatment, the physical examination does not establish the presence of active lumbar radiculopathy, and the EMG test was not submitted for review. Dr. K appealed Carrier's denial of the procedure to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, board certified in pain management and anesthesiology, upheld the previous adverse determination stating that, based on the clinical documentation, the requested procedure did not meet the Official Disability Guidelines (ODG) and would not be considered medically necessary. The IRO reviewer opined that there was insufficient objective data to correlate with

Claimant's subjective complaints, imaging studies and the electrodiagnostic study to establish the presence of active L4 radiculopathy. Specifically, the IRO reviewer noted that on physical examination Claimant showed no evidence of sensory or motor strength loss. Therefore the treatment was determined to be 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 in making decisions for 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 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."

ODG 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;
 - (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.)”.

In response to the IRO’s determination, Dr. JK testified that Claimant exhibited positive radicular findings on physical examination. But Dr. Ks’ testimony was vague and it appears that he has not seen the actual EMG test. Dr. K did not adequately address the IRO’s concern regarding the lack of unequivocal evidence of radiculopathy. Also Dr. K did not show how Claimant meets the criteria in the ODG regarding a response to previous treatment. The Claimant has the burden of proof to overcome the IRO determination and the Claimant failed to present sufficient evidence to overcome the IRO decision that the requested procedure is not reasonably necessary health care 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) 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 Amerisure Insurance Company, Carrier.
 - D. Claimant sustained a compensable injury to his lumbar spine on (Date of Injury).
 - E. The Independent Review Organization determined that Claimant is not entitled to a transforaminal injection at right L4 under anesthesia with fluoroscopic guidance.
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. Claimant failed to show that he had unequivocal evidence of radiculopathy upon examination.
4. Claimant does not meet the requirements in the ODG for a transforaminal injection at right L4 under anesthesia with fluoroscopic guidance, the requested procedure is not consistent

with the recommendations in the ODG, and Claimant failed to present other evidence-based medical evidence in support of the procedure. .

5. The transforaminal injection at right L4 under anesthesia with fluoroscopic guidance 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) Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to a transforaminal injection at right L4 under anesthesia with fluoroscopic guidance for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a transforaminal injection at right L4 under anesthesia with fluoroscopic guidance 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 **AMERISURE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CINDY GHALIBAF
5221 NORTH O'CONNOR BLVD., SUITE 400
IRVING, TX 75039**

Signed this 21st day of November, 2011.

Judy L. Ney
Hearing Officer