MEDICAL CONTESTED CASE HEARING NO 12076
M6-12-37561-01

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 February 16, 2012, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to lumbar caudal epidural steroid injection (ESI) at L5/S1 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by DM, ombudsman.
Respondent/Carrier appeared and was represented by HF, attorney.

BACKGROUND INFORMATION

On (Date of Injury), Claimant was thrown from a moving trailer into the pick-up truck pulling it. He sustained injuries to his head, left shoulder, stomach, groin, low back and right knee. He has had three knee surgeries, the last being a total knee replacement. His doctor wants to perform a second lumbar ESI. The first provide 50-60% pain relief in his legs and allowed Claimant to return to work. Carrier is disputing the medical necessity of the procedure. The IRO upheld the Carrier's denial.

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 caudal epidural steroid injection at L5/S1, 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 Official Disability Guidelines require documented radiculopathy before an ESI can be approved. It states, "Radiculopathy must be corroborated by imaging studies and/or electrodiagnostic testing." The first sentence of the IRO doctor's report on Page Five states, "Electrodiagnostic studies performed 03/03/10 revealed evidence of left L5 radiculopathy." The Official Disability Guidelines does not require both an EMG and an MRI or CT scan, as the IRO Doctor infers. Claimant met this criterion.

Claimant already had one ESI so the Official Disability Guidelines directs the reader to the *therapeutic phase*. The Official Disability Guidelines state under this 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." The third and fourth paragraphs of the IRO doctor's report note documented relief of 50-60%. Claimant testified the relief was in his legs. The medical records state the relief was in his legs. The IRO notes the relief was in his legs but increased pain in his low back. The Official Disability

Guidelines does not state relief from all pain. It just says relief of pain at 50-70%. Claimant had relief of his leg pain sufficient to meet this criterion.

The IRO doctor states the clinical documentation provided does not meet the recommendations but per his own report the recommendations found in the Official Disability Guidelines criteria indicated above are met by medical records he reviewed. Claimant testified he functioned so well after the first ESI he was able to return to work on a full-time, light duty basis. Since the injection wore off, Claimant testified credibly the acute pain and radiculopathy have returned. Claimant has documented radiculopathy and documented sufficient relief of pain after his first injection. Claimant met his burden of proof to provide, based upon evidence based medicine, objective medical evidence of the medical necessity for the lumbar caudal ESI at L5/S1.

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 (Self-Insured), Employer.

   C. On (Date of Injury), Employer provided workers' compensation insurance as a Self-Insurer.

   D. On (Date of Injury), Claimant sustained a compensable injury.

   E. The IRO board certified orthopedic surgeon determined Claimant should not have a lumbar caudal epidural steroid injection at L5/S1

2. Carrier delivered to Claimant 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 caudal epidural steroid injection at L5/S1 is 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 doctor that a lumbar caudal epidural steroid injection at L5/S1 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to a lumbar caudal epidural steroid injection at L5/S1 for the compensable injury of (Date of Injury).

ORDER

Carrier is 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

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

Signed this 17th day of February, 2012.

KEN WROBEL
Hearing Officer