MEDICAL CONTESTED CASE HEARING NO. 14060

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a repeat bilateral L4-5, L5-S1 lumbar ESI for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On April 15, 2014, Robert Greenlaw, a Division hearing officer, held a contested case hearing to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the determination of the Independent Review Organization (IRO) that the Claimant is not entitled to a repeat bilateral L4-5, L5-S1 lumbar ESI for the compensable injury of (Date of Injury)?

PARTIES PRESENT

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

Respondent/Carrier appeared and was represented by JC, attorney.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), while picking up a box. Claimant was diagnosed with a disc protrusion impinging upon the left L4 nerve root and he underwent a left L4-5 laminectomy on December 2, 1999. Claimant was subsequently diagnosed with failed back syndrome. Claimant has undergone several ESI's and his treating doctor has recommended a repeat bilateral L4-5, L5-S1 lumbar ESI. The request was denied by the Carrier and ultimately appealed to an IRO.

The IRO reviewer, identified as board certified in physical medicine and rehabilitation, upheld the Carrier's denial. The IRO reviewer stated that, although the time frame 6-8 weeks since the last injection was satisfied, there was no objective improvements in pain with the average pain level ranging from 8-9/10 on September 26, 2013 to 6-9/10 on November 7, 2013. The IRO reviewer noted that there was no objective improvement in function on November 7, 2013. The IRO reviewer concluded that the requested procedure was 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. 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(s), "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, reduction of medication use and avoiding surgery, but this treatment alone offers no significant long-term functional benefit*.
>
> (1) Radiculopathy (due to herniated nucleus pulposus, but not spinal stenosis) 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.)

Sedation: There is no evidence-based literature to make a firm recommendation as to sedation during an ESI. The use of sedation introduces some potential diagnostic and safety issues, making unnecessary use less than ideal. A major

> concern is that sedation may result in the inability of the patient to experience the expected pain and paresthesias associated with spinal cord irritation. This is of particular concern in the cervical region. (Hodges 1999) Routine use is not recommended except for patients with anxiety. The least amount of sedation for the shortest duration of effect is recommended. The general agent recommended is a benzodiazepine. (Trentman 2008) (Kim 2007) (Cuccuzzella 2006) While sedation is not recommended for facet injections (especially with opioids) because it may alter the anesthetic diagnostic response, sedation is not generally necessary for an ESI but is not contraindicated. As far as monitored anesthesia care (MAC) administered by someone besides the surgeon, there should be evidence of a pre-anesthetic exam and evaluation, prescription of anesthesia care, completion of the record, administration of medication and provision of post-op care. Supervision services provided by the operating physician are considered part of the surgical service provided.

Claimant testified that he continues to experience low back pain and that Dr. G recommended an ESI to relieve Claimant's lumbar spine symptoms; however, he did not meet the ODG recommendations to undergo a repeat ESI. The medical records presented indicate that pain relief of at least 50-70% for at least 6-8 weeks was not achieved. On the date of the injection, September 26, 2013, the claimant reported pain at eight or nine on a scale of 1 to 10 (transcribed as 8-9/10). On October 9, 2013, the pain was only down to a 7-8.5/10. By November 7, 2013, it was a 6-9/10. These pain complaints do not reflect the necessary diminishment required by the ODG for the requested repeat lumbar epidural steroid injection.

Based on the evidence presented, Claimant failed to prove that he meets the requirements in the ODG for the requested procedure and he failed to provide an evidence-based medical opinion sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to a repeat bilateral L4-5, L5-S1 lumbar ESI for the compensable injury of (Date of Injury).

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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. Claimant sustained a compensable injury on (Date of Injury).

D. National Fire Insurance Company, as successor to Transcontinental Insurance Company, provided workers' compensation coverage for the named employer on (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 IRO determined that the proposed repeat bilateral L4-5, L5-S1 lumbar ESI is not medically necessary for the compensable injury of (Date of Injury).

4. Claimant does not meet the recommendations of the ODG for a repeat bilateral L4-5, L5-S1 lumbar ESI, and he failed to present other evidence-based medicine supporting the necessity for this procedure.

5. A repeat bilateral L4-5, L5-S1 lumbar ESI 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 IRO that a repeat bilateral L4-5, L5-S1 lumbar ESI is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a repeat bilateral L4-5, L5-S1 lumbar ESI 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 **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, SUCCESSOR TO TRANSCONTINENTAL INSURANCE COMPANY,** and the name and address of its registered agent for service of process is:

CT CORPORATION SYSTEM
1999 BRYANT STREET, STE. 900
DALLAS, TEXAS 75201-3136

Signed this 25th day of April 2014.

Robert Greenlaw
Hearing Officer