

____¹
Petitioner

VS.

VF CORPORATION

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARING

DECISION AND ORDER

I. INTRODUCTION

____ (Claimant) submitted a request to VF Corporation, his workers' compensation insurance carrier (Carrier), to preauthorize epidural steroid injection (ESI) treatment for the chronic cervical neck pain he has experienced for several years. The Carrier denied the request and ____ requested medical dispute resolution. An independent review organization (IRO), acting on behalf of the Texas Workers' Compensation Commission (Commission), concluded that ESI treatment was medically unnecessary. Claimant appealed the decision. The ALJ concludes that ____ did not prove the ESI treatment was medically necessary and the appeal should be denied.

II. PROCEDURAL HISTORY

A hearing on the appeal convened on November 29, 2004, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, Fourth Floor, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. Carrier appeared through its attorney, Greg Solcher. Petitioner appeared and was assisted by Commission Ombudsman Juan Mireles. The hearing concluded the same day.

Because there were no contested issues concerning notice or jurisdiction, those matters are addressed in the fact findings and legal conclusions without further discussion here.

III. DISCUSSION

1. Legal Standards

Under TEX. LAB. CODE ANN. §408.021(a)(1-3),

(a) 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. The employee is specifically entitled to health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;

¹ The Claimant's initials are used for confidentiality purposes.

- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.

"Health care," under TEX. LAB. CODE ANN. §401.011(19), includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Under TEX. ADMIN. CODE § 148.21(h) and (i), the Claimant has the burden of proof.

B. Factual Background and Party Positions

The Claimant suffered an at-work injury to his neck, left shoulder, and hand in _____. He subsequently underwent rotator-cuff-repair surgery in February 2000 and a left carpal tunnel release in August 2000. He had three cervical ESIs in 2002 before undergoing a cervical fusion in January 2003. He received temporary relief from the ESIs for about 15 to 20 days. He continues to have pain in his neck and upper extremities. He is taking pain medication now, but has received very little relief. His doctor recommended ESI treatment.

Bernie McCaskill, M.D., testified on behalf of the Carrier. He is board certified in orthopedic surgery and has been in practice for 22 years. In Dr. McCaskill's opinion, ESI treatment is unnecessary because the Claimant's pain is axial, meaning it is in his neck rather than radiating into his arm. He testified that trigger point injections, rather than ESIs, are indicated for axial pain, although he does not believe either treatment will provide lasting relief. He pointed out that the Claimant has had a variety of treatments over a period of five years, including ESIs, without significant improvement. He indicated oral medications would be appropriate.

Manouchehr Rafeaian, M.D., testified on Claimant's behalf. He agreed with Claimant's chronic-cervical-pain-syndrome diagnosis. He concluded the best treatment for Claimant would be pain medications with occasional injections to relieve his pain. He recommended trigger point injections at this time rather than ESIs. He testified that ESIs are for more acute types of pain. He indicated that ESIs might be appropriate if trigger point injections are not helpful.

3. Analysis

The ALJ concludes that the Claimant did not meet his burden of proving that ESI treatment is medically necessary. Dr. McCaskill testified the treatment would not be helpful for axial pain. The Claimant's own expert, Dr. Rafeaian, testified ESI treatment is not appropriate at this time. The ALJ did not find any expert opinion evidence saying ESI treatment would be indicated at present.

IV. FINDINGS OF FACT

1. _____ (Claimant) suffered an at-work injury to his neck, left shoulder, and hand in _____.
2. Claimant subsequently underwent rotator-cuff-repair surgery in February 2000 and a left carpal tunnel release in August 2000.

3. Claimant had cervical epidural steroid injections (ESIs) in 2002.
4. Claimant underwent a cervical fusion in January 2003.
5. Claimant has continued to have pain in his neck and upper extremities.
6. Claimant requested pre-authorization of ESI treatment, which his workers' compensation insurer (Carrier) denied as medically unnecessary.
7. Claimant requested medical dispute resolution, after which an independent review organization, acting on behalf of the Texas Workers' Compensation Commission, concluded that the requested treatment was medically unnecessary.
8. Claimant requested a hearing within 20 days of receiving notice of the MRD decision.
9. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
11. Trigger point injections and pain medications would be more appropriate to treat Claimant's condition at this time than ESI treatment.

III. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
3. Claimant has the burden of proof in this case. 1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC § 148(h).
4. Claimant failed to carry his burden of proof.
5. Claimant's request for ESI treatment should be denied.

ORDER

IT IS THEREFORE ORDERED that the Claimant's request for authorization of ESI treatment be, and the same is hereby, denied.

Signed December 21, 2004.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**