MEDICAL CONTESTED CASE HEARING NO. 09141
M6-09-15347-01

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.

ISSUE

A contested case hearing was held on April 6, 2009, to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to a cervical epidural steroid injection for the compensable injury of _____?

2. Did the claimant timely appeal the decision of the Independent Review Organization (IRO)?

PARTIES PRESENT

Petitioner/Claimant appeared, and was represented by POC, attorney. Respondent/Carrier appeared, and was represented by JL, attorney.

BACKGROUND INFORMATION

Claimant, on _____, was struck by a door being opened, on the right hand and wrist. Claimant was diagnosed with right wrist and hand internal derangement, right elbow internal derangement and cervical radiculitis. Based upon a Decision and Order dated April 17, 2008, the compensable injury extended to include the neck. An EMG test was performed on May 13, 2008 that showed mild right C6 nerve root irritation. A cervical MRI on January 11, 2008 revealed a broad-based disc protrusion at C5-C6. On June 6, 2008 and then on July 3, 2008 the medical records of Dr. JK reported a request for a diagnostic cervical epidural steroid injection.

The initial request for a cervical epidural steroid injection was denied. On July 21, 2008 the request for reconsideration by Dr. GP upheld the denial stating that there was no documentation to support a finding of radiculopathy (the EMG study was not included for review). On August 14, 2008 an Independent Review Organization also denied the requested procedure. In its denial, the IRO Reviewer, a physician board certified in pain management, anesthesiology, and physical medicine and rehabilitation, reported that there was not substantial documentation of radiculopathy, there was a lack of examination findings except for limited range of motion of the neck, and the EMG findings were rather nonspecific and did not correlate well with the clinical presentations. The IRO Reviewer used the Official Disability Guidelines (ODG) as the basis of the screening criteria.

With regard to the issue of timely appeal of the IRO decision, the evidence presented in the hearing revealed that the IRO decision was sent to the parties on August 18, 2008. The evidence further revealed that the claimant initially submitted a request on the wrong form (DWC 45) on

August 26, 2008. The correct, signed DWC-045A form requesting the medical contested case hearing was received by the Division Chief Clerk on September 22, 2008.

DISCUSSION

Section 408.021 of the Texas Labor Code 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. Section 401.011(22-a) defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by Section 401.011(18-a) as 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.

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.

With regard to cervical steroid injections, the ODG sets forth the following:

> "Recommended as an option for treatment of radicular pain (defined as pain in dermatomal distribution with corroborative findings of radiculopathy). See specific criteria for use below. In a recent Cochrane review, there was one study that reported improvement in pain and function at four weeks and also one year in individuals with chronic neck pain with radiation. (Peloso-*Cochrane*, 2006) (Peloso, 2005) Other reviews have reported moderate short-term and long-term evidence of success in managing cervical radiculopathy with interlaminar ESIs. (Stav, 1993) (Castagnera, 1994) Some have also reported moderate evidence of management of cervical nerve root pain using a transforaminal approach. (Bush, 1996) (Cyteval, 2004) A recent retrospective review of interlaminar cervical ESIs found that approximately two-thirds of patients with symptomatic cervical radiculopathy from disc herniation were able to avoid surgery for up to 1 year with treatment. Success rate was improved with earlier injection (< 100 days from diagnosis). (Lin, 2006) There have been recent case reports of cerebellar infarct and brainstem herniation as well as spinal cord infarction after cervical transforaminal injection. (Beckman, 2006) (Ludwig, 2005) Quadriparesis with a cervical ESI at C6-7 has also been noted (Bose, 2005) and the American Society of Anesthesiologists Closed Claims Project database revealed 9 deaths or cases of brain injury after cervical ESI (1970-1999). (Fitzgibbon, 2004) These reports were in contrast to a retrospective review of 1,036 injections that showed that there were no catastrophic complications with the procedure. (Ma, 2005) The American Academy of Neurology recently concluded that epidural steroid injections may lead to an improvement in radicular lumbosacral pain between 2

and 6 weeks following the injection, but they do not affect impairment of function or the need for surgery and do not provide long-term pain relief beyond 3 months, and there is insufficient evidence to make any recommendation for the use of epidural steroid injections to treat radicular cervical pain. (Armon, 2007) There is evidence for short-term symptomatic improvement of radicular symptoms with epidural or selective root injections with corticosteroids, but these treatments did not appear to decrease the rate of open surgery. (Haldeman, 2008) See the Low Back Chapter for more information and references."

"Criteria for the use of Epidural steroid injections, therapeutic:
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 by physical examination and 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) for guidance
(4) If used for diagnostic purposes, a maximum of two injections should be performed. A second block is not recommended if there is inadequate response to the first block. Diagnostic blocks should be at 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) In the therapeutic phase, repeat blocks should only be offered if there is at least 50% pain relief for six to eight weeks, with a general recommendation of no more than 4 blocks per region per year.
(8) Repeat injections should be based on continued objective documented pain and function response.
(9) Current research does not support a “series-of-three” injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections.
(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or stellate ganglion blocks or 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."

"Criteria for the use of Epidural steroid injections, diagnostic:
To determine the level of radicular pain, in cases where diagnostic imaging is ambiguous, including the examples below:
(1) To help to evaluate a pain generator when physical signs and symptoms differ from that found on imaging studies;
(2) To help to determine pain generators when there is evidence of multi-level nerve root compression;
(3) To help to determine pain generators when clinical findings are suggestive of radiculopathy (e.g. dermatomal distribution) but imaging studies are inconclusive;

(4) To help to identify the origin of pain in patients who have had previous spinal surgery."

The ODG distinguishes between the criteria for "therapeutic" and "diagnostic" epidural steroid injections. The evidence shows that Dr. K, requestor, referred to a "diagnostic" procedure. In this case, Claimant has not had previous spinal surgery or evidence of multi-level root compression. Dr. K was specific in stating that the pathology/pain generator was at C5-6. The IRO opinion was based upon the ODG. Since Claimant's medical records do not demonstrate the criteria as set forth by the ODG, and Claimant has presented no evidence-based medical opinion to justify a departure from the ODG, a decision in Carrier's favor is appropriate with respect to the medical necessity issue presented for resolution herein.

Division Rule 133.308(t)(1)(B)(i) provides that a written appeal "must be filed with the Division's Chief Clerk no later than the later of the 20th day after the effective date of this section or *20 days after the date the IRO decision is sent to the appealing party and must be filed in compliance with Division rules.* Requests that are timely submitted to a Division location other than the Division's Chief Clerk, such as a local field office other the Division, will be considered timely filed and forwarded to the Chief Clerk for processing; however, this may result in a delay in the process of the request" (emphasis added).

Twenty days after August 18, 2008, when the IRO decision was sent to the parties, would have allowed Petitioner time to appeal the IRO decision through September 8, 2008 (since September 7, 2008 was a Sunday). Claimant requested a CCH specifically appealing the decision of the IRO on August 26, 2008 but it was on the wrong form. Nevertheless, the request was in compliance with Division rules and the appeal of the IRO was timely filed. Also September 7, 2008 was the effective date of Commissioner's Bulletin #B-0064-08 that tolled all deadlines in (County) due to the ramifications from Hurricane Ike. Petitioner/Claimant resides at (Claimant's Address), which is in (County). Even though Petitioner's corrected appeal to the IRO decision was not filed until September 22, 2008, due to the tolling of deadlines, this is an additional reason that Petitioner's appeal to the IRO decision was timely.

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 _____, Claimant was employed by (Employer).

   C. On _____ Claimant sustained an injury arising out of the course and scope of her employment with Employer.

   D. The Independent Review Organization (IRO) determined that the requested service of a cervical epidural steroid injection was not reasonable and necessary health care for Claimant's compensable injury of _____.

2. Carrier delivered to Claimant and Provider 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. Dr. K recommended that Claimant undergo a cervical epidural steroid injection.

4. Claimant does not meet the criteria for a cervical epidural steroid injection as set forth in the ODG.

5. A cervical epidural steroid injection is not health care reasonably required for Claimant's compensable injury of _____.

6. The decision of the IRO was sent to the petitioner on August 18, 2008.

7. Twenty days after August 18, 2008 was Sunday September 7, 2008, extending the appeal deadline to September 8, 2008.

8. Claimant's request for at CCH, appealing the decision of the IRO, was received on August 26, 2008.

9. Commissioner's Bulletin # B-0064-08 tolled deadlines beginning September 7, 2008 due to the ramifications of Hurricane Ike in (County).

10. Claimant is a resident of (County), Texas.

11. The emergency declaration tolling deadlines was in effect when Claimant filed the DWC-45A form on September 22, 2008.

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 that Claimant is not entitled to a cervical epidural steroid injection for the compensable injury of _____.

4. Claimant timely appealed the decision of the IRO.

DECISION

Claimant is not entitled to a cervical epidural steroid injection for the compensable injury of _____. Claimant timely appealed the decision of the IRO.

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 **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201

Signed this 8th day of April, 2009.

Judy L. Ney
Hearing Officer