MEDICAL CONTESTED CASE HEARING NO. 11054
M6-10-28808-01

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 2, 2010 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 epidural steroid injection (ESI) and selective nerve root block at L4-5 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by AC, ombudsman.
Respondent/Carrier appeared and was represented by RG, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his lumbar spine on _____ when he slipped on some black ice and fell. Claimant underwent an MRI of the lumbar spine on January 15, 2009 which revealed an annular tear and right subarticular disc protrusion at L4-5 impinging on the right L5 nerve root. Claimant underwent an EMG/NCV on February 16, 2009 which revealed no evidence of lumbar radiculopathy on the left and, on the right, there was evidence of membrane instability and decreased motor unit potentials in the L5 distribution suggestive of nerve root irritation. The Claimant testified that he has had physical therapy, trigger point injections and pain medications for treatment of his lumbar injury and that he continues to suffer from low back pain. The Claimant's treating doctor, Dr. U, requested an L4-5 transforaminal ESI and selective nerve root block. This request was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, board certified in physical medicine and rehabilitation and in pain management, 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 noted that the Claimant had undergone prior physical therapy and taken pain medications with no significant benefits; however, the request still did not meet the ODG criteria. The IRO reviewer referred to the MRI studies that revealed clear evidence of nerve root impingement to the right at L5 and physical examinations that revealed an absent left Achilles reflex which is not consistent with the imaging findings. The IRO reviewer cited the ODG which indicate there must be unequivocal evidence of radiculopathy in order to consider ESI's and, given the inconsistent findings on the Claimant's most recent physical examination, this is not established. The IRO reviewer also noted that there are no additional studies, such as an EMG/NCV, that would further support radiculopathy for this Claimant.

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; 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 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.)

ODG Criteria for the use of epidural steroid injections, diagnostic:

ODG Recommended as indicated below. Diagnostic epidural steroid transforaminal injections are also referred to as selective nerve root blocks, and they were originally developed as a diagnostic technique to determine the level of radicular pain. In studies evaluating the predictive value of selective nerve root blocks, only 5% of appropriate patients did not receive relief of pain with injections. No more than 2 levels of blocks should be performed on one day. The response to the local anesthetic is considered an important finding in determining nerve root pathology. (CMS, 2004) (Benzon, 2005) When used as a diagnostic technique a small volume of local is used (<1.0 ml) as greater volumes of injectate may spread to adjacent levels. When used for diagnostic purposes the following indications have been recommended:
1) To determine the level of radicular pain, in cases where diagnostic imaging is ambiguous, including the examples below:
2) To help to evaluate a pain generator when physical signs and symptoms differ from that found on imaging studies;
3) To help to determine pain generators when there is evidence of multi-level nerve root compression;
4) To help to determine pain generators when clinical findings are consistent with radiculopathy (e.g., dermatomal distribution) but imaging studies are inconclusive;
5) To help to identify the origin of pain in patients who have had previous spinal surgery.

Pursuant to the ODG recommendations for ESI's, radiculopathy must be documented and objective findings on examination need to be present. In response to the IRO's determination, Dr. U writes, in a report dated October 25, 2010, that the Claimant also has a high intensity zone signal which is significant of a tear within the annular aspect of the disk. Dr. U went on to state,

"Therefore with anybody that has commonsense [sic] and knows the proper care of a lumbar pathology understands that the epidural injection is a diagnostic and therapeutic tool, a left-sided transforaminal epidural injection would be very beneficial for a better prognosis of this patient." Dr. U did not address the IRO's concern regarding the lack of unequivocal evidence of radiculopathy. Although it appears that the IRO was not afforded the opportunity to review the EMG/NCV study, Dr. N, a board certified anesthesiologist, testified that the Claimant's positive EMG/NCV findings were on the right and that the Claimant's physical exam findings were inconsistent with a diagnosis of lumbar radiculopathy. Dr. N testified that EMG/NCV studies are equivocal tests, at best, and must be supported by physical findings. Dr. N also testified that the Claimant's pain and physical findings showed no evidence of a radiculopathy in a dermatomal distribution. Without documented, objective evidence of radiculopathy, the criteria for ESI's, as set forth in the ODG, has not been met. The Claimant has the burden of proof to overcome the IRO determination and the Claimant failed to present any evidence based medical opinion contrary to the determination of the IRO that the Claimant is not entitled to a transforaminal ESI and selective nerve root block at L4-5 for the compensable injury of _____.

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 the employee of (Employer).

   C. Claimant sustained a compensable injury to his lumbar spine on _____.

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.

4. The Claimant does not meet the requirements in the ODG for a transforaminal ESI and selective nerve root block at L4-5 and the requested procedure is not consistent with the recommendations in the ODG.

5. The transforaminal ESI and selective nerve root block at L4-5 is not health care reasonably required for the compensable injury of _____.

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 the Claimant is not entitled to a transforaminal ESI and selective nerve root block at L4-5 for the compensable injury of _____.

DECISION

Claimant is not entitled to a transforaminal ESI and selective nerve root block at L4-5 for the compensable injury of _____.

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 AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TX 75201

Signed this 3rd day of November, 2010.

Carol A. Fougerat
Hearing Officer