

MEDICAL CONTESTED CASE HEARING NO. 19006

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 Administrative Law Judge determines that Claimant is not entitled to a transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography for the (Date of Injury) compensable injury.

STATEMENT OF THE CASE

On March 5, 2019, Ana Thornton, a Division Administrative Law Judge, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by EG, ombudsman. Respondent/Carrier appeared and was represented by RJ, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: None

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits: ALJ-1 through ALJ-3

Petitioner/Claimant's Exhibits: C-1 through C-6

Respondent/Carrier's Exhibits: CR-A through CR-H

DISCUSSION

On (Date of Injury), Claimant sustained a compensable injury to his lower back. Claimant testified that he had lumbar surgery in 2013 after the (Date of Injury) incident. Claimant further testified that before the 2013 lumbar surgery, he had received physical therapy and pain injections to his lumbar area, but that has had no injections since the 2013 surgery.

Medical records show that Claimant had treatment in 2018 for his back at (Healthcare Provider)(HCP) in (City), Texas. The earliest (HCP) record in evidence is dated May 18, 2018 and states that Claimant is a "(Age) year old male with lower back pain radiating down bilateral LE." It also stated, "HX of lumbar spine surgery with Dr. A in 2013." Claimant returned to (HCP) on June 15, 2018 and the notes from that visit indicates that Claimant informed of "Recent fall x2 over the last month," and reported "weakness in the R > L extremity." CW, P.A., examined Claimant and noted that Claimant had decreased Achilles reflexes with decreased motor strength. Mr. W ordered a lumbar spine MRI at that visit. The lumbar spine MRI was performed on July 6, 2018. The impression revealed the following:

1. Interval laminotomy at the L4-5 level.
2. Small ventral epidural filing defect at the L4-5 level just inferior to the disc space, significantly smaller currently 1 compared to the prior exam. This is concerning for a small residual or recurrent disc extrusion.
3. Diffuse disc osteophyte complex and facet hypertrophy combine to narrow the lateral recesses and neural foramina at the L4-5 level bilaterally.
4. Neural foraminal narrowing at L4-5 and L5-S1.
5. Suspect sclerotic nondisplaced L5 pars defects.
6. Grade 1 anterolisthesis at L5-S1 with minimal retrolisthesis at L4-5.

Claimant returned to (HCP) on July 13, 2018 for a follow-up visit. The "Plan Note" portion of the report noted that Mr. W, "Review(ed) lumbar spine MRI with patient. Neuroforaminal narrowing bilaterally at L4-5 and residual disc bulging. Patient would be excellent candidate for periodic injections for pain control."

On July 13, 2018, (HCP) submitted a request for pre-authorization for approval of a transforaminal lumbar epidural steroid injection at bilateral L4-5 with epidurography, radiology, anesthesia and dexlido M kit. On July 19, 2018, Carrier issued a denial of the request. The denial letter addressed to Dr. IT at (HCP) indicated that a licensed anesthesiologist reviewed Claimant's medical records in formulating the denial. The letter also revealed that the Official Disability Guidelines (ODG) were taken into consideration. The letter stated in its findings that:

The injured worker has an extrusion at L4-5 and right-sided radicular findings. However, the notes state that no therapy has been attempted, so the request for the transforaminal epidural steroid injection is not supported. Also, the injury is (Number)

years old with no indication that this injection had ever been tried. There is no significant medical or psychiatric co-morbidity to support the use of monitored anesthesia care with this injection, nor it is standard of care to do so.

Dr. T requested a reconsideration, and on August 7, 2018, Carrier issued a denial of the reconsideration. The August 7, 2018 denial letter stated that another licensed anesthesiologist reviewed Claimant's medical records. In explaining the denial, the August 7, 2018 letter stated the following:

...(injured worker) has complaints of back pain, with some radiation into the lower extremity. The provider is requesting a lumbar epidural steroid injection, but there is no documentation of radiculopathy on exam. The injured worker's physical examination does not document gross motor weakness, sensory loss, diminished reflexes and myotomal or dermatomal findings consistent with the requested level of injection. Per ODG, Epidurography may be recommended when medical/surgical history suggests significant abnormal anatomy of the epidural space, and diagnostic mapping of anatomy of the epidural space beyond available CT or MRI images is required. In this case, none of the aforementioned conditions exist...As such, epidurography is not medical necessary . . .

Claimant asked for an IRO to contest Carrier's denial of the transforaminal epidural steroidal injection. The Texas Department of Insurance appointed IRO Express Inc., to act as an IRO. On October 4, 2018, the IRO issued a notice of its review decision and upheld the previous adverse determination. The IRO reviewer, identified as a physician or other health care provider having a specialty in "pain medicine" determined that the transforaminal lumbar epidural steroid injection at bilateral L4-5 with epidurography was not medically necessary. The IRO reviewer noted that he/she reviewed Claimant's medical records reflecting treatment at (HCP) on May 18, 2018, June 15, 2018, July 13, 2018, as well as the July 6, 2018 MRI of the lumbar spine, and Carrier denial letters. The IRO reviewer stated the following:

There was no clear evidence that patient was initially unresponsive to conservative management including exercise, physical methods or muscle relaxants before consideration of an epidural steroid injection. Guidelines do not recommend epidurography with a lumbar ESI and there were no exceptional factors provided to support this request beyond guideline recommendations.

Claimant contends that the preponderance of the evidence contradicts the decision of the IRO. In support of his position, Claimant relied on his testimony and medical records, including records reflecting his treatment at (HCP) on May 18, 2018, June 15, 2018, July 13, 2018, and the July 6, 2018 MRI report regarding his lumbar spine.

Texas Labor Code § 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. The term “health care reasonably required” means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community. See Texas Labor Code § 401.011(22-a). Evidence-based medicine is further defined in Texas Labor Code § 401.011(18-a) as the use of 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 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 division 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.

In evidence are the ODG guidelines for epidural steroid injections. According to the ODG guidelines, the criteria for use of epidural steroid injections includes the following (among other requirements):

Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDS, muscle relaxants, and neuropathic drugs).

In this case, Claimant has failed to present sufficient evidence to contradict the decision of the IRO. Nothing presented by Claimant reflects evidence-based medical evidence to overcome the IRO determination. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to a transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography for the compensable injury of (Date of Injury).

The Administrative Law Judge 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. On (Date of Injury), Employer provided workers' compensation coverage with Liberty Insurance Corporation, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. IRO Express Inc., was appointed to act as IRO by the Texas Department of Insurance.
 - F. On October 4, 2018, the IRO determined that the proposed transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography was not medically necessary for the compensable injury of (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 Administrative Law Judge's Exhibit Number 2.
3. Claimant does not meet the recommendations of the ODG for a transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography, and Claimant failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
4. The transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography 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 transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a transforaminal lumbar epidural steroid injection at bilateral L4-L5 with epidurography for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the medical benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code § 408.021.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
211 E. 7th STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 6th day of March, 2019

Ana Thornton
Administrative Law Judge