

MEDICAL CONTESTED CASE HEARING NO. 20012

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 (ALJ) determines that Petitioner/Claimant is not entitled to the cervical epidural steroid injection (ESI) with catheter at C7 and T1 for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On August 27, 2020, Amanda Barlow, a Division administrative law judge, held a medical 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 the Claimant is not entitled to the cervical ESI with catheter at C7 and T1 for the compensable injury of (Date of Injury)?

PERSONS PRESENT

The hearing was held by teleconference due to the COVID-19 pandemic. Petitioner/Claimant appeared and was assisted by DC, ombudsman, and by JW, layperson¹. Respondent/Carrier appeared and was represented by JF, attorney.

EVIDENCE PRESENTED

No witnesses testified.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 and ALJ-2.

Petitioner/Claimant's Exhibits C-1 through C-7.

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

¹ Ms. W gave the rebuttal portion of Petitioner/Claimant's closing argument. Before that, she was an observer.

BACKGROUND INFORMATION

Dr. AR requested authorization to perform a cervical ESI with catheter at C7 and T1 for the compensable injury of (Date of Injury). His request was denied as not being medically necessary. It was first denied through Utilization Review and then denied by an IRO.

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."

In this case, a physician board-certified in anesthesiology with a sub-certification in pain medicine reviewed the case. That doctor determined that the adverse determination should be upheld. The IRO doctor noted that a prior utilization review report showed a lack of objective radicular findings in a specific nerve root. The EMG in evidence showed radiculopathy at the C5-C6 level, not the requested C7-T1 level. The IRO doctor also explained that repeat injections

are not recommended and that the use of epidural catheters for cervical ESIs have an increased risk of complications.

Petitioner/Claimant provided medical records, a written statement, and a note regarding his proposed care to support his position and meet his burden of proof. It is unclear who authored the note as it was unsigned and not on the letterhead of a medical provider. Therefore, it was given very little weight. A qualified expert medical opinion with reference to evidence-based medicine was necessary for Petitioner/Claimant to meet his burden of proof on this matter and such evidence-based medical evidence was lacking in this case. As such, insufficient evidence-based medical evidence existed to explain that the requested cervical ESI was health care reasonably required for the compensable injury. After review, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to the cervical ESI with catheter at C7 and T1.

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), Petitioner was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Bankers Standard Insurance Company, Respondent.
 - D. On (Date of Injury), Petitioner sustained a compensable injury.
 - E. The Independent Review Organization determined Petitioner should not have the cervical ESI with catheter at C7 and T1.
2. Respondent/Carrier delivered to Petitioner/Claimant a single document stating the true corporate name of Respondent/Carrier, and the name and street address of Respondent/Carrier's registered agent, which document was admitted into evidence as a Respondent/Carrier's Exhibit.
3. The cervical ESI with catheter at C7 and T1 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 the cervical ESI with catheter at C7 and T1 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Petitioner/Claimant is not entitled to the cervical ESI with catheter at C7 and T1 for the compensable injury of (Date of Injury).

ORDER

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

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

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136**

Signed this 1st day of September, 2020.

AMANDA BARLOW
Administrative Law Judge