

MEDICAL CONTESTED CASE HEARING 22007

**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 the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a cervical epidural steroid injection with C-Arm at C6/7 for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

On April 19, 2022, a medical contested case hearing was held 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 cervical epidural steroid injection with C-Arm at C6/7 for the compensable injury of (Date of Injury)?

**PERSONS PRESENT**

Petitioner/Claimant appeared and was assisted by CJ, ombudsman.

Respondent/Insurance Carrier appeared and was represented by BJ, attorney.

BS, M.D., appeared during his testimony

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: Claimant

For Insurance Carrier: BS, M.D.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 through ALJ-4

Claimant's Exhibits C-1 through C-7

Insurance Carrier's Exhibits CR-A through CR-I (CR-F pp. 1-2 did not scan well and are illegible, but they are the Official Disability Guides (ODG) pages for a cervical ESI, and they are the same pages found in ALJ-4. When combining Insurance Carrier's three emailed files, PDF pp. 57, 113, and 114 are cover pages from being faxed and are included in the combined file. They are not included as pages of any of the exhibits. PDF p. 170 is blank.)

## **BACKGROUND INFORMATION**

Claimant testified that on (Date of Injury), he had to lift a 400 pound barrel of oil and walk it over to a pallet. He noticed immediately that something was not quite right, and the next day he could barely get out of bed. Claimant had one cervical surgery, a cervical ESI that worked for one week and one day, a second cervical surgery, and then another cervical ESI. That ESI gave Claimant tremendous relief. Claimant testified he went down to a pain level of zero and did not need any medications for five weeks. Claimant testified he felt like he did before the injury. After five weeks, Claimant's pain began to return and eventually got back to the 6-8/10 level of pain, with tingling and numbness occasionally going into his left little finger and left thumb.

Claimant's surgeon, pain medicine doctor, and treating doctor have recommended Claimant undergo another cervical ESI. Insurance Carrier's utilization review doctors each opined the procedure was not recommended for Claimant. The IRO board-certified anesthesiologist agreed that the treatment was not recommended under the criteria of the ODG. Claimant requested a medical contested case hearing so he could get the recommended cervical ESI approved.

Texas Labor Code Section (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 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 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 DWC 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. Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Section 413.017(1).

In accordance with the above statutory guidance, the DWC has adopted treatment guidelines by 28 Texas Administrative Code (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 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."

On the date of this medical contested case hearing, the Official Disability Guidelines, in pertinent part, provides the following with regard to a cervical epidural steroid injection with C-Arm at C6/7:

Conditionally recommended at a level no higher than C6-7 on a case-by-case basis as a short-term treatment for intervertebral disc herniation, degenerative changes, and/or spinal stenosis that results in radiculopathy (defined as irritation or injury to a nerve root that typically causes pain, numbness, and/or weakness in the part of the body that is supplied with the nerves from that root), when used in conjunction with active rehabilitation efforts.

Patient criteria for ESIs:

(1) Radiculopathy (irritation or injury to a nerve root that typically causes pain and/or numbness or weakness in the part of the body supplied with the nerves from that root) must be well documented, along with objective neurologic findings on physical examination. Acute radiculopathy must be corroborated by advanced imaging studies (e.g., computed tomography scan, magnetic resonance imaging) and, when appropriate, electrodiagnostic testing, unless documented pain, reflex loss, and myotomal weakness abnormalities support a dermatomal radiculopathy diagnosis. A request for a procedure in a patient with chronic radiculopathy requires additional documentation of recent symptom worsening associated with deterioration of neurologic state.

(2) Unresponsive to conservative treatment (e.g., exercise, physical therapy, nonsteroidal anti-inflammatory drugs, muscle relaxants, neuropathic drugs).

Repeat therapeutic injections: Repeat blocks are not routinely recommended unless there is evidence of an acute pain exacerbation after a symptom-free period. This criterion is based on an emerging concept that the true natural history of radicular pain due to intervertebral disc herniation often follows that of a

relapsing remitting disease, with temporary occurrences of symptoms over the years. Evidence indicates that ESIs should be restricted to patients with continuous radicular pain for less than 6 months. Therefore, the following criteria should be considered:

(i) Repeat injection should require documentation that previous block/block(s) produced a minimum of 50%-70% pain relief and improved function for at least 6-8 weeks.

(ii) Repeat block is better supported with documentation of decreased medication requirement after the previous procedure.

(iii) Based on general consensus, no more than 3-4 blocks per region should be administered within a 12-month period.

While there is the difference of opinion amongst the doctors, it is Claimant's own testimony that supports the opinion of the IRO doctor. Claimant testified several times that he experienced five weeks of complete pain relief. Claimant underwent his second cervical ESI on April 16, 2021. The medical records from his pain management doctor dated May 26, 2021, note Claimant's pain and the tingling/numbness in his left little finger had returned.

Criterion 2(i) states, "Repeat injection should require documentation that previous block/block(s) produced a minimum of 50%-70% pain relief and improved function for at least 6-8 weeks." Claimant only had pain relief for five weeks. Claimant did not meet the criteria for the cervical ESI at the C6/7 level to be approved.

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 insurance with Texas Mutual Insurance Company, Insurance Carrier.
  - D. On (Date of Injury), Claimant sustained a compensable injury.

- E. The Independent Review Organization board-certified anesthesiologist determined Claimant should not have a cervical epidural steroid injection with C-Arm at C6/7.
2. Insurance Carrier delivered to Claimant a single document stating the true corporate name of Insurance Carrier, and the name and street address of Insurance Carrier's registered agent, which document was admitted into evidence as an Insurance Carrier exhibit.
  3. A cervical epidural steroid injection with C-Arm at C6/7 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 cervical epidural steroid injection with C-Arm at C6/7 is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

The preponderance of the evidence is not contrary to the decision of the IRO that a cervical epidural steroid injection with C-Arm at C6/7 is not health care reasonably required for the compensable injury of (Date of Injury).

**ORDER**

Insurance 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 Section 408.021.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD GERGASKO  
TEXAS MUTUAL INSURANCE COMPANY  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723.**

Signed this 19<sup>th</sup> day of April, 2022.

KEN WROBEL  
Administrative Law Judge