

MEDICAL CONTESTED CASE HEARING NO. 14019

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 October 21, 2013 and October 22, 2013, with the record closing on October 22, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to cervical ESI C3-4 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

On October 21, 2013 Petitioner/Claimant appeared and was represented by his wife, JW, layperson. Respondent/Carrier appeared and was represented by SS, attorney.

On October 22, 2013 Claimant chose not to appear. He was represented by his wife, JW, layperson. Carrier appeared and was represented by SS, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable neck injury on (Date of Injury). He had an epidural steroid injection at C3-4 on July 2, 2013 that decreased his pain roughly by 50%. Apparently the pain relief did not last, because preauthorization for another cervical ESI at C3-4 was requested on July 23, 2013. The request was denied by Carrier and two utilization review doctors. The IRO doctor upheld the previous denials, and Claimant appealed.

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."

The ODG provides the following 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:

The IRO doctor concluded the proposed treatment was not reasonable or necessary medically because the request failed to meet the requirements of criteria (1), in that there was an absence of documentation showing radiculopathy, and (7), in that documentation did not reflect at least 6-8 weeks of pain relief.

Claimant put into evidence the report for an examination and upper extremities EMG/NCV performed by Dr. PD on August 12, 2013. The exam and EMG/NCV were done after the preauthorization request was made but before the IRO doctor received the case assignment on September 5, 2013 and may be considered.

Claimant complained of neck pain with left upper extremity numbness, tingling, and burning all the way down to the distal left hand, and the EMG showed positive electrodiagnostic evidence of a left C3-C5 cervical radiculopathy. However, on physical examination Dr. D found sensory testing intact to light touch, pinprick, and proprioception throughout the bilateral upper extremities with no sign of any focal sensory or dermatomal deficits.

Claimant’s wife and lay representative, JW, testified that the July 2, 2013 ESI provided her husband with partial but not total pain relief for six to eight weeks. She also argued that the treating doctor’s request should be approved, because he best understood Claimant’s condition and what care was appropriate.

Carrier relied on the IRO decision.

There was no medical opinion evidence to the effect that the ODG criteria for the requested injection were met.

Claimant failed to overcome the IRO decision by the preponderance of evidence based medical evidence.

There was no objection to the testimony, reports, or qualifications of any doctor.

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 (Date of Injury) Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury) Employer provided workers' compensation insurance with Ace American Insurance Company, Carrier.
 - D. On (Date of Injury) Claimant sustained a compensable injury.
 - E. The Independent Review Organization determined Claimant should not have the requested treatment.
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. Cervical ESI C3-4 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 Cervical ESI C3-4 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to cervical ESI C3-4 for the compensable injury of (Date of Injury).

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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **ACE 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, TEXAS 75201**

Signed this 22nd day of October, 2013.

Thomas Hight
Hearing Officer