



September 2002, but it made him feel worse. He eventually underwent fusions at his L3-L4 and L4-L5 spinal levels in September 2003. His improvement has been very gradual and most of his pains are still present. He received another ESI in March 2004, but his pain has continued. He has not returned to work.

In April 2004, Old Republic denied a request for a third ESI. After a request for medical dispute resolution, an independent review organization (IRO) physician<sup>2</sup> concluded that the ESI was not medically necessary. The IRO said

The reviewer states that the practice guidelines do not support the use of multiple epidural steroid injections in patients with post laminectomy syndrome. (Evidence Based Practice Guidelines for interventional techniques in the management of chronic pain. Pain Phys. 2003;6:3-81).<sup>3</sup>

The Claimant underwent a magnetic resonance imaging (MRI) on June 22, 2004. The reviewing doctor 's impressions were

1. Interval laminectomy fusion L3-4 and L4-5 with wide patency in the canal and good alignment of the hardware.
2. Enhanced epidural fibrosis; this is the most severe on the left encircling the left L4 nerve root from the level L3-4 to exits into the neural foramen.<sup>4</sup>

2. Evidence and Analysis

The ALJ concludes that the ESI should be authorized. In contrast to the evidence supporting Old Republic 's assertions, the Claimant's physicians focused on the scar tissue shown by the June 22, 2004, MRI as the source of the pain. They recommended a foraminal injection, which was a different type than previously tried. Dr. Cho wrote on July 7, 2004,

... MRI did reveal some epidural fibrosis and scarring, especially at L3-L4.

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<sup>2</sup> The IRO physician was board certified in anesthesiology.

<sup>3</sup> Ex. 2 at 2.

<sup>4</sup> Ex. 2 at 18.

Patient is scheduled to have a transforaminal injection and I think that this will be extremely beneficial to him.<sup>5</sup>

On June 24, 2004, Dr. Villareal noted that the MRI revealed epidural fibrosis encircling the left L4 nerve root exiting the neuroforamen. He said

. . . . It is absolutely essential that this patient gets a transforaminal injection at L4-L5 and L5-S1. Failure to respond to a caudal injection is not a reason to deny this given his new findings by MRI. There is ample evidence to support the literature that foraminal injections in the face of epidural fibrosis are more efficacious than caudal injection[s,] . . . since . . . [they are] more specific and targeted to where the lesion is originating. We need to do it at the level of the foramen and one level below to get the run off up into the L5 nerve root. . . .<sup>6</sup>

At the hearing, the Claimant testified that his doctor explained to him that the second ESI did not treat as many areas of the spine as was now indicated to be necessary by the MRI. He said his doctor told him that the second ESI was a BB gun approach, whereas the third ESI would be a shotgun approach. He said he has tried several other types of treatments, including physical therapy, water therapy, pain medications, and an electrical stimulator, but his pain has persisted.<sup>7</sup>

By contrast, the IRO reviewer focused simply on the multiple nature of the ESIs in patients with post laminectomy syndrome and said that type of treatment was not indicated. His opinion was written before the June 22, 2004, MRI and did not expressly address scar tissue as a source of the Claimant 's pain. He also did not address the different type of ESI requested.

In a similar vein to the IRO physician, the peer-review doctor employed by the managed care company handling the claim said, The clinical notes state that this patient has had L-ESI x 2 without significant benefits for the injury of 4-9-02. I see no indication for a L-ESI at this time.<sup>8</sup> The doctor

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<sup>5</sup> Ex. 2 at 21.

<sup>6</sup> Ex. 2 at 24.

<sup>7</sup> He said he thought the electrical stimulator was working, but Old Republic denied his request for continuing its use.

<sup>8</sup> Ex. 2 at 12.

simply concluded that because the first two ESIs were unsuccessful, a third probably would be, too. The doctor did not expressly recognize that the first ESI occurred a year before the operation. The IRO decision was issued before the June 22, 2004, MRI.

Overall, the ALJ concludes that the preponderant evidence supports authorizing the ESI.

## **II. FINDINGS OF FACT**

1. The Claimant sustained a work-related injury to his back on\_\_\_\_, while delivering and loading merchandise as a truck driver.
2. The Claimant presented to Guillermo Parra, M.D., and eventually to Paul Cho, M.D., a neurologist. He is now seeing Jose L. Villarreal, M.D., a pain management specialist.
3. The Claimant received an epidural steroid injection (ESI) in September 2002, but it made him feel worse.
4. The Claimant eventually underwent fusion at the L3-L4 and L4-L5 levels of his spine in September 2003.
5. The Claimant has tried several types of other treatments, including physical therapy, water therapy, pain medications, and an electrical stimulator, but his pain has persisted.
6. The Claimant received another ESI in March 2004, but his pain has continued.
7. The Claimant has not returned to work.
8. The workers' compensation insurance carrier for the Claimant's employer, Old Republic Insurance Company, denied a request for a third ESI in April 2004.
9. The claimant requested medical dispute resolution.
10. An independent review organization concluded that the ESI was medically unnecessary.
11. It is undisputed that the Claimant requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
12. All parties received not less than ten days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

13. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
14. A magnetic resonance imaging (MRI) performed on the Claimant on June 22, 2004, revealed the formation of enhanced epidural fibrosis, or scar tissue, in the Claimant's spine resulting from the September 2003 operation.
15. The ESI requested is a transforminal injection.
16. A transforminal injection at his L3-L4 and L4-L5 spinal levels is likely to be beneficial in treating the pain caused by the epidural fibrosis.
17. The requested transforminal injection is reasonably required by the nature of the Claimant's injury.

### **III. CONCLUSIONS OF LAW**

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. The Claimant has the burden of proof in this case. 1 TEX. ADMIN. CODE (TAC) ' 155.41; 28 TAC ' 148(h).
3. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. ' ' 2001.051 and 2001.052.
4. The Claimant proved that the requested ESI is medically necessary. TEX. LAB. CODE ANN. ' 408.021(a).
5. Old Republic Insurance Company should pay for the requested ESI. TEX. LAB. CODE ANN. ' 408.021(a).

**ORDER**

**IT IS THEREFORE ORDERED** that the ESI requested by \_\_\_ is authorized and that Old Republic Insurance Company shall pay the reasonable cost of the ESI.

**SIGNED August 13, 2004.**

**JAMES W. NORMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**