

Dr. Martin referred him to Dr. Sims³ for epidural steroid injections and pain management. He received an ESI in May 2002, but it did not relieve his pain. He eventually underwent fusions at his C5-C6 and C6-C7 spinal levels on September 24, 2002. According to Claimant, the pain was even worse after the surgery. He had another surgery in February 2003 which he described as a "Adecompression."⁴ Claimant's pain subsided some after the second surgery, but his functioning was impaired and he could not raise his arm above shoulder level.

In April and June 2003, Claimant received additional ESIs. This time, his condition improved to the extent that he could lift his arm and was able to install a ceiling fan. He returned to work on a full-time basis and continues to operate a forklift. Claimant's pain, however, has also continued. He "Atractions" his neck every day and receives acupuncture once a week which helps relieve his symptoms.

In April 2004, Old Republic denied a pre-authorization request for an additional ESI. After a request for medical dispute resolution, an independent review organization (IRO) physician⁵ concluded that the ESI was not medically necessary because Claimant received only temporary improvement from the ESIs in April and June 2003.

B. Evidence

Claimant introduced into evidence Petitioner's Exhibit 1, consisting of excerpts of his medical records. Claimant also testified at the hearing. Claimant contends that the epidural steroid injections relieved his symptoms of pain resulting from the fusion. Further, he claims that the injections allowed him to return to work on a full-time basis because he was unable to lift his arm until after the injections. According to Claimant, the ALJ should rely upon the treating physician's recommendation for ESIs and authorize them because they relieve the effects of his injury.

Carrier presented the testimony of Neal Blauzvern, D.O., in support of its contention that ESIs are medically unnecessary. Carrier also introduced into evidence Carrier's Exhibit 1.⁶ Dr. Blauzvern testified that the ESIs are medically unnecessary because the previous injections provided only short-term relief to Claimant and because the medical records did not contain documentation of medical pathology that would warrant treatment through the use of ESIs.

³ Stephen Sims, M.D., of the Pain Management Clinic in Huntsville, Texas.

⁴ Guy Clifton, M.D., of the University of Texas Houston Health Science Center performed the surgeries.

⁵ The IRO physician was board certified in anesthesiology/pain management.

⁶ Carrier's Exhibit 1 also contains, among other things, Dr. Blauzvern's written medical recommendation that the ESIs should not be authorized.

C. Analysis

The ALJ finds the argument that Claimant received only temporary relief from the ESIs in April and June of 2003 to be unpersuasive. Indeed, the evidence seems to be to the contrary. Claimant was able to lift his arm when he previously had been unable to do so, even to the extent of installing a ceiling fan. Further, Claimant has returned to work on a full-time basis. Neither the IRO reviewer nor Dr. Blauzvern provided any evidence related to the amount of time Claimant should have experienced relief from the ESIs. Almost one year later, Claimant has returned to work and he attributes his ability to do so to the effects of the ESIs. While Claimant's condition may have naturally improved as a result of the surgery, Claimant himself attributes his pain relief to the ESIs. However, Dr. Blauzvern and the IRO physician dispute his claim that any significant pain relief resulted from the ESIs because the pain returned in only one week, as reflected by his treating physician's notes.

The ALJ finds the testimony of Dr. Blauzvern to be persuasive on the issue of whether an ESI is medically indicated. Dr. Blauzvern practices pain management in a private practice setting at the Austin Central Texas Spine Institute. He treats chronic and acute pain patients and has experience in the use of epidural steroid injections for pain management. He is board-certified by the American Board of Anesthesiologists with a sub-specialty in pain management. According to Dr. Blauzvern, there is some dispute within the medical community about the long-term efficacy of ESIs because, to date, there have been no double-blind, placebo-controlled, peer-reviewed random studies that document the efficacy of ESIs for long-term use. He testified that ESIs can be helpful on a short to medium-term basis, but that they will not cure persistent pain.

According to Dr. Blauzvern, the goal of a cervical ESI is to relieve pain due to nerve root irritation. This type of pain is manifested by pain radiating down the arm into the hand or fingers. During the injection, a needle is placed into the epidural space, using x-ray guidance, at the level of pathology. Medication is then injected, bathing the nerve root with a combination of a local anesthetic and steroid. The injection will relieve inflammation and the nerve root irritation, thereby resulting in pain relief. Dr. Blauzvern testified that an ESI is medically indicated when there is both radicular pain and neurological findings. In this case, Dr. Blauzvern testified that there are no indications that ESIs are medically necessary for Claimant's condition. Dr. Blauzvern cites to Claimant's complaints on December 1, 2003, of neck pain on both sides without radicular pain. Carrier's Exhibit 1, p. 27. According to Dr. Blauzvern, the myofascial pain reported by Claimant could be treated with trigger point injections. He also testified that Claimant's complaints of numbness around his left scapula also do not constitute radicular pain, necessitating ESIs. Further, Dr. Blauzvern noted that ESIs will not treat the spinal column or its joints, consequently, degenerative changes in Claimant's facet joints do not indicate the need for ESIs.

Dr. Blauzvern testified that trigger point injections and ESIs treat different pain generators. When both are done at the same time, it makes it difficult to determine which might have afforded pain relief. Based upon Claimant's responses to the April and June 2003 ESIs, Dr. Blauzvern said that Claimant's response was of an insufficient degree and duration to support their continuation.

Again, Dr. Blauzvern did not quantify what the degree and duration should have been. However, he testified that subjecting Claimant to unnecessary medical treatment will expose him to risks of treatment that could be detrimental. Dr. Blauzvern concluded that ESIs were not medically

necessary; however, he agreed that trigger point injections could provide relief for myofascial pain if they were clearly documented as being medically beneficial.

Claimant introduced exhibits consisting of medical records from April 9, 2003, through May 17, 2004. Petitioner's Exhibit 1. Most of the records consist of office visit notes from Dr. Sims. The notes refer to the ESIs in April and June of 2003. On June 19, 2003, Dr. Sims observed that Claimant had improved right upper extremity radiculopathy and his pain Acompletely resolved for about a week and now is slowly beginning to return.” Pet. Ex. 1, p. 18.

On October 3, 2003, Claimant received trigger point injections from Dr. Lenny Jue.⁷ Pet. Ex. 1, p. 17. On October 24, 2003, Dr. Lenny Jue recommended a bilateral cervical facet joint injection at C4/5, C5/6, and C6/7 due to tenderness along the fact joints. Dr. Jue stated that the injection is necessary Abecause of his failure of conservative medical management and two recent surgeries.” Pet. Ex. 1, p. 16. On November 11, 2003, Dr. Jue noted a marked limitation in Claimant's range of motion and moderate to severe tenderness along the facet joints. On December 1, 2003, Claimant was seen by Dr. Sims who noted that he did not complain of much radicular pain. Pet. Ex. 1, p. 13. From December 1, 2003, to February 24, 2004, Claimant received multiple trigger point injections for myofascial tenderness. Pet. Ex. 1.

On March 25, 2004, Dr. Sims observed that Claimant had returned to work and was experiencing a flare up of right upper extremity radicular symptoms, as well as myofascial pain. Pet. Ex. 1, p. 8. On April 13, 2004, Dr. Sims performed six trigger point injections for the myofascial pain. On April 28, 2004, Claimant requested a repeat of the trigger point injections, claiming that they allowed him to continue to work. Dr. Sims ' notes provide the observation that Claimant could not continue to receive such frequent trigger point injections. The records indicate that Claimant

previously received the ESIs because he experienced inflammation over the C6-C7 radiculopathic pain. Petitioner's Exhibit 1, p. 22. There is no such reference in the later medical records that would support the request for an ESI at this time. The notes from Dr. Sims do not provide sufficient detail explaining why Claimant needs an ESI and the outcome expected. Without this level of detail, it is not possible to find medical necessity for the ESI based upon the evidence presented at hearing.

Without question, Claimant believes that the ESIs in April and June of 2003 helped relieve his symptoms of pain and allowed him the use of his arm again. He has since returned to work; however, the pain continues. He seeks another ESI in order to relieve his persistent pain. Unfortunately, the medical documentation simply does not support the need for an ESI because it does not indicate that Claimant continues to suffer from radiculopathy or that there is pathology which would indicate the need for an ESI. While Claimant understandably seeks relief from his pain, the evidence does not support the use of an ESI to do so. The ALJ concludes that, based upon the medical evidence presented at hearing, Claimant failed to meet its burden of proving that an ESI is medically necessary.

⁷ Dr. Jue is an M.D. with Pain Resources, Inc., which is located in Conroe and The Woodlands, Texas.

II. FINDINGS OF FACT

1. Claimant sustained a work-related injury to his cervical spine on ____, while operating a fork-lift.
2. Claimant has been treated by Dr. Sims for pain management.
3. In May of 2002, Claimant received an epidural steroid injection (ESI), but it did not relieve his pain.
4. Claimant eventually underwent fusion at the C5-C6 and C6-C7 spinal levels on September 24, 2002.
5. Claimant received two ESIs in April and June of 2004, that relieved his pain completely for about a week.
6. After receiving the two ESIs referred to in Finding of Fact No. 5, Claimant was able to lift his arm and experienced pain relief that allowed him to install a ceiling fan.
7. Claimant has returned to work on a full-time basis.
8. Claimant continues to experience persistent pain.
9. The workers' compensation insurance carrier for the Claimant's employer, Old Republic Insurance Company, denied a request for an ESI in April 2004.
10. The claimant requested medical dispute resolution.
11. An independent review organization concluded that the ESI was not medically unnecessary because the pain relief was only temporary.
12. It is undisputed that the Claimant requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
13. 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.
14. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
15. There is no documentation in Claimant's records that Claimant suffers from ongoing or persistent radiculopathy.

16. There is no documentation in Claimant's records that Claimant's pain results from an abnormality resulting from the fusion.
17. There is no competent medical evidence that the requested ESI will relieve or cure the effects of Claimant ' s injury.
18. The requested ESI is not 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. Claimant did not meet its burden of proving that the requested ESI is medically necessary. TEX. LAB. CODE ANN. ' 408.021(a).
5. Old Republic Insurance Company should not pay for the requested ESI. TEX. LAB. CODE ANN. ' 408.021(a).

ORDER

IT IS THEREFORE ORDERED that ___'s request for preauthorization of an ESI is denied.

SIGNED November 24, 2004.

**SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**