

**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 (CCH) was held on March 4, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that a lumbar facet block is not reasonable and necessary medical treatment for the compensable injury of \_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by an (Ombudsman).

Carrier appeared and was represented by an (Attorney).

**BACKGROUND INFORMATION**

Claimant worked in the dairy section of the Employer's grocery store. He injured his low back and fractured 2 ribs in a slip and fall incident at work on \_\_\_\_.

Claimant has been diagnosed with lumbar radiculopathy and lumbar disc derangement. He received physical therapy and chiropractic treatment with no relief of the pain. On December 2004, Claimant received an epidural steroid injection, which relieved all of the radicular pain. He continued to experience low back pain.

On April 5, 2005, Claimant received a facet block. This provided pain relief for about one month and the pain returned to his low back and his radicular symptoms returned, as well. This lead the treating doctor to provide 2 separate diagnoses because he has 2 separate pain generators. He has facet joint pain that was relieved by the facet injection and radicular pain that was relieved by the epidural steroid injection.

Claimant's treating doctor has requested repeat facet injections on several occasions over the past 2 years, which have been denied by the Carrier.

In November 2007, Claimant's treating doctor has, again, requested facet block treatment. The Carrier, again, denied the request. The Carrier's denial was based on 2 reasons. First, the Carrier states that the facet injection was not successful in controlling the pain. The source of such a statement is not clear. The medical records document complete pain relief following the initial facet injection on April 5, 2005, for a period of over one month. On May 17, 2005, the medical records note that the facet joint pain had returned. Second, the Carrier denies the facet block treatment because the treatment is not appropriate for radicular pain. This is true. A facet

block is not recommended treatment for radicular pain. However, the facet block treatment was requested to treat the facet joint pain, not the radicular pain.

The IRO reviewer, in a 6-line analysis, upheld the Carrier's denial.

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 qualified 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.

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 Official Disability Guidelines (ODG).

The IRO decision properly quotes the operative provisions of the ODG, "Facet injections are not to be repeated if the first injection was not successful in relieving the pain, and facet injections are not to be used for the treatment of radicular pain." The medical records show that Claimant had his initial lumbar facet block on April 5, 2005. The treating doctor's records state that Claimant received 100% relief of his lumbar pain for over a period of one month. Likewise, the medical records indicate the lumbar facet block was to treat Claimant's low back pain, not the radicular pain. In fact, at the time of the initial facet block, Claimant had no radicular pain. Claimant had received a lumbar steroid injection earlier, which resulted in temporary relief of the radicular pain with the only problem remaining being his low back pain. While the preponderance of the evidence shows that the recommended treatment is for facet pain, rather than radicular pain and that the initial lumbar facet block was successful, the treating doctor did not provide a report addressing the ODG criteria and explaining how and why Claimant meets the criteria for us of lumbar facet blocks. This type analysis is required to comply with the evidence based medicine standard.

In the present case, Claimant failed to meet his burden of proof. Claimant presented medical records showing that his initial lumbar facet block was successful in reducing his lumbar pain. However, Claimant failed to provide medical evidence of how his medical records and medical history complied with the Official Disability Guidelines (ODG). Claimant's request for medical treatment without sufficient reference to the ODG or other evidence based medicine, does not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO decision. The preponderance of the medical evidence is not contrary to the IRO decision and the requested lumbar facet block does not meet the criteria set out in the ODG.

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 \_\_\_\_, Claimant was the employee of (Employer).
  - C. Claimant sustained a compensable injury on \_\_\_\_.
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. Claimant's initial lumbar facet block provided 100% pain relief for over one month period of time.
4. Claimant's lumbar facet block is recommended to treat low back pain, not radicular pain.
5. Claimant failed to establish that his request for lumbar facet injections complied with the Official Disability Guidelines or other evidence based medicine.
6. The preponderance of the evidence is not contrary to the IRO decision that a lumbar facet block is not reasonable and necessary medical treatment for the compensable injury of \_\_\_\_.

### **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. A lumbar facet block is not health care reasonably required as defined in the Texas Labor Code.

### **DECISION**

A lumbar facet block is not health care reasonably required as defined in the Texas Labor Code.

### **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.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 7th day of March, 2008.

Donald E. Woods  
Hearing Officer