

MEDICAL CONTESTED CASE HEARING NO 08030  
M6-08-9233-01

**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.

**ISSUE**

A benefit contested case hearing was held on December 6, 2007, to decide the following disputed issue:

Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that outpatient bilateral L4-S1 facet median nerve blocks are not reasonable and necessary health care services for the compensable injury of \_\_\_?

**PERSONS PRESENT**

Claimant appeared and was assisted by an (Ombudsman). Self-Insured appeared and was represented by an (Attorney). Present on behalf of Employer was MP. Also present were RU, CM, and YG. The court reporter was DH.

**BACKGROUND INFORMATION**

On \_\_\_, Claimant sustained a compensable injury while working as a bus driver when she fell to the ground from a bus landing on her buttocks, arching her back and hitting her head on the pavement. Dr. S, Claimant's current treating doctor, has recommended outpatient bilateral L4-S1 facet median nerve blocks. Carrier denied the treatment and was successful in the IRO process in its denial of the treatment.

**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. **Section 401.011(22-a)** defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by **Section 401.011(18-a)** as 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 in making decisions about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG)*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*.

The Carrier denied preauthorization for the requested bilateral L4-S1 facet median nerve blocks citing the *ODG*, and the fact that facet/median branch blocks are reserved for non-radicular pain.

The IRO reviewer, a doctor board certified in internal medicine, stated that the applicable guidelines and peer-reviewed medical literature concerning facet blocks in the treatment of low back pain were reviewed and opined that the requested procedure was not recommended as it confers no sustained benefit in the treatment of low back pain. The IRO reviewer checked off the “Medical Judgment, Clinical Experience and Expertise in Accordance with Accepted Standards” and “ODG” boxes on an attached sheet entitled “A Description and the Source of the Screening Criteria or Other Clinical Basis Used to Make the Decision.”

Dr. C, Carrier’s peer review doctor, testified that he had reviewed the records and agreed with the IRO. He further explained that because Claimant had been diagnosed with radiculopathy and presented with radicular symptoms, facet injections were not recommended by the *ODG* as those injections were limited to treating patients with no radicular symptoms. He explained that facet blocks are for the diagnosis and treatment of facet generated pain rather than disc related pain. He opined that if Claimant has radiculopathy, the pain is not facet generated and the *ODG* does not recommend facet injections under those circumstances.

Carrier propounded questions to the treating doctor and specifically asked him to identify his diagnosis of Claimant; whether he believed her pain was facet generated; why he recommended bilateral facet median nerve root injections; and, whether the injections were therapeutic. Dr. S responded that Claimant’s initial presentation was of low back pain that radiated to the buttocks and posterior thighs and lateral aspects of her lower legs bilaterally. He explained that her exam revealed pain in the lumbar paraspinous region and bilateral posterior superior iliac spine; she had positive Kemp test bilaterally; and a positive straight leg raise bilaterally; and, sensate exams and DTR exams were normal. He opined that her diagnoses were lumbar spondylarthritis, lumbar facet arthropathy, and lumbar radicular symptoms; and, explained that due to an oversight the only diagnosis entered on her initial visit was that of lumbar radicular symptoms. He explained further that her primary complaint is pain consistent with lumbar spondylarthritis/lumbar facet arthropathy. He stated that he strongly suspects that her pain originates from the lumbar facet joints, but was unable to use the facet median nerve blocks to confirm the diagnosis because of the denial by the carrier. He stated that if the diagnostic nerve blocks provided relief, he would consider radiofrequency thermocoagulation of the facet median nerves to provide her pain relief for an extended period.

The IRO reviewer did not have the benefit of the treating doctor’s answers to the questions posed by the carrier herein. The preponderance of the evidence shows that Claimant does not, in fact, suffer from radicular pain. The MRI reveals very mild narrowing of the left neural foramen at L5-S1 and is otherwise unremarkable. There is no spinal stenosis or nerve root impingement at any level shown by the MRI. While it is true that the *ODG does not* recommend facet block injections for treatment of radicular symptoms, the evidence presented shows that Claimant’s symptoms are not truly radicular in nature. Based on the treating doctor’s records, the condition he wishes to explore is a

facet injury. He wishes to use the facet blocks as a diagnostic tool in assessing Claimant's condition and confirming his diagnosis. However, the IRO reviewer did not have that information at the time of the IRO decision was issued.

The *ODG* addresses facet joint diagnostic blocks. The *ODG* sets out the criteria for use of diagnostic blocks for facet mediated pain, which are relevant to the facts in the instant case, as follows: (1) limited to patients with low-back pain that is non-radicular and at no more than two levels bilaterally; (2) documentation of failure of conservative treatment prior to the procedure for at least 4-6 weeks; (3) no more than 2 joint levels are injected in one session; and, (4) minimum of 2 diagnostic blocks per level are required, with at least one block being a medial branch block; (5) bilateral blocks are generally not medically necessary.

The records of Dr. S show that on (subsequent date of injury), he suspected that Claimant may have injured the joints in her back as part of her compensable injury. He opined that she would benefit from bilateral L4-L5 and L5-S1 facet medial nerve blocks. That is the requested procedure. While the preponderance of the evidence shows that the recommended treatment is for facet pain, rather than radicular pain, Dr. S did not provide a report addressing the *ODG* criteria and explaining how or why Claimant meets the criteria for use of diagnostic blocks for facet mediated pain. Further, that information was not provided to either the Carrier's preauthorization reviewers or the IRO reviewer.

As noted previously herein, "health care reasonably required" means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert's bald assurance of validity is not enough. *See Black v. Food Lion, Inc.*, 171 F.3<sup>rd</sup> 308 (5<sup>th</sup> Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). When determining reliability, the hearing officer must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990).

In the instant case, the claimant failed to meet her burden of proof. While the claimant presented evidence and the opinion of her treating doctor, the claimant failed to present evidence-based medical evidence as to the appropriateness of the proposed procedure, she failed to establish that no such evidence-based medical evidence is available, and she failed to present evidence that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. Dr. S's post-IRO opinion regarding the nature of Claimant's injury and proposed treatment, without sufficient reference to the *ODG* or other evidence-based medicine justifying departure from the *ODG*, does not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. The preponderance of the evidence is not contrary to

the IRO decision and the requested lumbar facet blocks for this injured worker do 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) when she sustained a compensable injury.
  - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of \_\_\_\_.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The treating doctor requested outpatient bilateral L4-S1 facet median nerve blocks for diagnostic purposes related to what he believes to be facet joint pain related to the compensable injury.
4. The requested service is **not** consistent with the *ODG* criteria for facet joint diagnostic blocks.
5. The preponderance of the evidence is not contrary to the decision of IRO that outpatient bilateral L4-S1 facet median nerve blocks are not reasonable and necessary health care services 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 was proper in the (City) Field Office.
3. Outpatient bilateral L4-S1 facet median nerve blocks are not reasonable and necessary health care services for the compensable injury of \_\_\_\_.

### **DECISION**

Outpatient bilateral L4-S1 facet median nerve blocks are not reasonable and necessary health care services for the compensable injury of \_\_\_\_.

**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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**JW  
(ADDRESS)  
CITY, TEXAS (ZIP CODE).**

Signed this 26<sup>th</sup> day of March, 2008.

Erika Copeland  
Hearing Officer