

**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 March 27, 2008, 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 L3-S1 lumbar facet injections are not reasonable and necessary health care services for the compensable injury of \_\_\_\_\_?

**PERSONS PRESENT**

Claimant appeared and was assisted by an ombudsman. Carrier appeared and was represented by attorney, RT. Also present was TM. The hearing was translated for the benefit of Claimant by OE.

**BACKGROUND INFORMATION**

On \_\_\_\_, Claimant sustained a compensable injury while working in a warehouse. He testified that he was in the back of a truck and fell to the street injuring the left side of his head and his back. As the result of his injury he has had continuing headaches, back and neck pain.

Claimant's treating doctor, Dr. O, has recommended bilateral L3-S1 lumbar facet injections for treatment of the compensable injury. 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 initially denied preauthorization for the requested bilateral L3-S1 lumbar facet injections citing the *ODG*, and the fact that the ODG does not recommend the performance of facet injections at more than two levels per injection session because multiple simultaneous injections preclude accurate assessment of the effects of the treatment. On reconsideration, preauthorization was again denied. The reviewer opined that Claimant had non-radicular back pain and he is not a surgical candidate and an MRI shows spondylosis. He further noted that the ODG stipulates that 2 levels of facet injections can be performed, but the treating doctor has requested 3 levels. The reviewer noted further that it would be reasonable to perform L4-5 and L5-S1, but not the three levels requested by the treating doctor.

The IRO reviewer, an orthopedic surgeon, upheld the preauthorization denial. He noted that his review revealed the fact that Claimant had ongoing back pain since September of 2006; that diagnostic studies revealed degenerative change in the lumbar spine; and, that he had undergone epidural steroid injections, nerve root decompression with RACZ catheter, different medications and evaluation by a number of providers. He noted that flexion/extension x-rays documented degenerative change with no abnormal motion and the fact that bilateral facet injections had been recommended for treatment of Claimant's ongoing subjective complaints. The reviewer opined that there was no medical indication for the requested bilateral lumbar facet injections from L3 to S1. He explained that the multiple diagnostic tests available did not provide clear evidence of a problem that might cause the subjective complaints. He further cited the ODG treatment recommendations for therapeutic facet block injections for the low back that not more than one block is recommended; there should be no evidence of radicular pain, spinal stenosis or previous fusion; if successful the recommendation is to proceed with medial branch diagnostic blocks and subsequent neurotomy; no more than 2 joint levels may be blocked at any one time; and there should be evidence of a formal plan of additional evidence-based activity and exercise in addition to facet joint injection therapy. 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."

The records of Dr. O reveal that on October 2, 2007, he noted that Claimant had continued complaints of low back pain, and neurosurgeons had not recommended surgery. He noted the normal flexion/extension x-rays and the recommendation to continue conservative care. He further noted that Claimant had two epidural steroid injections, which reduced his pain, but were not optimal. Dr. O decided that, since surgery was not indicated, facet injections and possible SI joint injections would provide better results for overall pain relief. He further noted Claimant had no neurologic deficits, despite his previous diagnosis of lower extremity radiculopathy. Dr. O diagnosed low back pain secondary to disc pathology and facet pain demonstrated on physical examination, and ordered bilateral facet injections.

Following the preauthorization denial, Dr. O stated that the procedure he requested was medically indicated and necessary as prior procedures were successful in reducing pain to a degree, but

Claimant still had 40 to 50% pain present. He opined that in reviewing the MRI he believed that some of the pain was coming from the facet region, which he confirmed on physical examination, therefore facet injections were medically necessary.

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 his burden of proof. While the claimant presented evidence and the opinion of his treating doctor, the claimant failed to present evidence-based medical evidence as to the appropriateness of the proposed procedure, he failed to establish that no such evidence-based medical evidence is available, and he failed to present evidence that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. The treatment proposed by Dr. O is a departure from the ODG in that he recommends facet injections, despite diagnosing radiculopathy, and he recommends facet injections at more than two levels. Dr. O’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 outpatient bilateral lumbar facet injections from L3 to S1 for this injured employee 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 the (employer) when he 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. Respondent delivered to Petitioner 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 L3-S1 lumbar facet injections for treatment of facet joint pain.
  4. The requested service is not consistent with the *ODG* criteria for lumbar facet injections.

### 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. The preponderance of the evidence is not contrary to the decision of IRO that outpatient bilateral L3-S1 lumbar facet injections are not reasonable and necessary health care services for the compensable injury of \_\_\_\_.

### DECISION

The preponderance of the evidence is not contrary to the decision of IRO that outpatient bilateral L3-S1 lumbar facet injections 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

**EXECUTIVE DIRECTOR**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIP CODE)**

Signed this 22<sup>nd</sup> day of May, 2008.

Erika Copeland  
Hearing Officer