

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 26, 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 bilateral L3-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 ombudsman. Carrier appeared and was represented by attorney, SB. The court reporter was DH.

BACKGROUND INFORMATION

On ___, Claimant sustained a compensable injury while working as a certified medical assistant. She testified that she fell off a step stool and sustained injuries to her neck, shoulders, right arm (elbow), low back, hips, knees and right ankle as she stumbled, reached back with her right hand and bent and twisted in an attempt to catch herself when she fell.

Claimant's treating doctor, Dr. S, has recommended bilateral L3-S1 facet medial nerve blocks for treatment of pain caused by facet arthropathy. 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 facet median nerve blocks citing the *ODG*, and the fact that Claimant's pain pattern appeared to be both axial and radicular and opined that it was extremely doubtful that the requested treatment would be of any significant long term benefit. On reconsideration, preauthorization was again denied. The reviewer noted that Claimant had multiple pain generators as a result of a cervical strain, thoracic strain, low back pain, bilateral knee contusion, right elbow contusion and ankle sprain. That reviewer opined that the multiple pain generators, including both radicular and axial low back pain, rendered the requested treatment inappropriate.

The IRO reviewer, a board certified anesthesiology and pain management doctor, upheld the preauthorization denial. That reviewer opined that Claimant did not have a reasonable suspicion for lumbar facet joint pain as the MRI did not show facet joint hypertrophy, only facet arthropathy which was a normal disease of life, not an acute injury. The reviewer attributed Claimant's pain to myofascial pain in the lumbar paravertebral muscles and posterior superior iliac crest area. The reviewer further opined that there was no reason to perform a diagnostic facet based medial branch block as there was not a reasonable suspicion for facet pain and there was no mention that facet radial frequency ablation was being considered. The IRO reviewer specifically cited ACOEM Chapter 12 and ODG treatment guidelines for low back diagnostic facet blocks. The IRO reviewer checked off the "ACOEM – American College of Occupational & Environmental Medicine UM Knowledgebase" 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. S reveal that on November 2, 2007, he noted that Claimant had complaints of low back pain, radiating to the bilateral buttock, hip, posterior thigh, posterior lower leg and feet. He diagnosed low back pain, lumbar spondylarthritis and sacroiliac pain; stated that her pain does correlate with her MRI findings; and, explained that her pain was related to facet arthropathy in the low back and sacroiliac joints. Dr. S recommended bilateral L3-S1 facet median nerve blocks.

Following the preauthorization denial and IRO opinion, Dr. S, was asked to support his conclusion that bilateral L3-S1 facet median nerve blocks were reasonable and necessary medical treatment for the compensable injury in the context of the ODG. He explained that on examination Claimant had positive Kemps signs bilaterally and he needed to perform bilateral L3-S1 facet median nerve blocks as a diagnostic tool. He stated that he was aware that there were studies that challenged the efficacy of the injections, but cited Practical Management of Pain, PR, J.D. page 745, as authority for the opinion that the blocks were a beneficial diagnostic tool. He further explained that if the facet median nerve block is successful, he would treat Claimant with radiofrequency thermo-coagulation of the cervical facet median nerves.

In an addendum to that opinion, Dr. S stated that he understood that the reason for the denial of the preauthorization for the requested facet blocks was the fact that he requested three level blocks rather than two. He explained that he does not routinely perform two level diagnostic blocks

because each level is innervated by the levels above and below and blocking two levels would really amount to only testing one level. He opined that testing one level at a time only prolongs the patient's pain and delays treatment for the problem.

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.3rd 308 (5th 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 opinions 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.

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 treatment proposed by Dr. S is a departure from the *ODG* in that he recommends facet blocks, despite diagnosing radiculopathy; he recommends facet blocks at more than two levels; and, he recommends bilateral blocks. 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 bilateral L3-S1 facet median nerve blocks 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 (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. 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 bilateral L3-S1 facet median nerve blocks for diagnostic purposes
4. The requested service is not consistent with the *ODG* criteria for lumbar facet joint diagnostic blocks.

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 bilateral L3-S1 facet median nerve blocks 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 bilateral L3-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 **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
1222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Signed this 22nd day of May, 2008.

Erika Copeland
Hearing Officer