

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 July 16, 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 a bilateral L3-L4 facet block is not a reasonable and necessary treatment for the compensable injury of _____?

PERSONS PRESENT

Claimant appeared and was assisted by ombudsman, MV. Carrier appeared and was represented by attorney, EH.

BACKGROUND INFORMATION

Claimant was seriously injured when he was struck by a forklift. Claimant underwent a L4-S1 fusion in 2001. Because of a recent increase in lower back pain, Claimant's surgeon, Dr. RU, requested authorization for a bilateral L3-4 facet block that is the subject of this dispute.

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**.

Accordingly, in a medical necessity dispute, the first issue is whether the proposed care is consistent with the *ODG*. The IRO, identified as a board certified orthopaedic surgeon, upheld the denial of the requested facet block. The IRO decision indicates that it utilized the *ODG* as its screening

criteria. It further notes that Claimant did not have any history of tenderness over L3-4 facets. Claimant argues the IRO's decision, because it cites very little rationale, should not be afforded presumptive weight. Claimant also argues that the *ODG* allows the use of facet blocks for therapeutic and diagnostic purposes. Claimant emphasized that he has not undergone a facet block at the L3-4 level previously so the prohibitions in the *ODG* concerning multiple series facet joint injections are inapplicable. Claimant offered a one page document listing a summary of two studies and the guidelines of the North American Spine Society that purport to recommend the use of facet blocks.

Carrier argues that the IRO decision should be afforded presumptive weight, that the IRO's decision was consistent with the *ODG*, and that Claimant failed to present persuasive proof of evidence based medicine contrary to the decision of the IRO.

While it is clear that the IRO did not specifically articulate the basis of the decision in detail, this does not mean that the IRO decision should not be afforded presumptive weight. Also, as argued by the Carrier, the IRO decision is consistent with the *ODG* as Claimant does not meet two of the four criteria for the use of facet blocks as he has documented radicular pain and there is not adequate documentation that Claimant has failed conservative care.

Accordingly, the Claimant failed to meet his burden of proof. While Claimant presented some evidence-based medical evidence as to the appropriateness of the requested facet block, it was not sufficiently detailed to be persuasive. This 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.

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 he sustained a compensable injury.
 - C. The IRO determined that the requested bilateral L3-L4 facet block was not reasonable and necessary health care 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 a bilateral L3-4 facet block.

4. The *ODG* lists criteria for the use of facet blocks which include an absence of radicular pain and documentation of the failure of conservative treatment.
5. The Claimant has documented radicular pain and no history of tenderness over L3-4 facets.
6. There is inadequate documentation that Claimant has failed conservative care for any condition related to his spine at the L3-4 level.
7. Claimant did not present persuasive evidence-based medical evidence as to the appropriateness of the proposed bilateral L3-4 facet block.
8. A bilateral L3-4 facet block is not a reasonable and necessary health care service 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. The preponderance of the evidence is not contrary to the decision of IRO that a bilateral L3-4 facet block is not a reasonable and necessary health care service for the compensable injury of _____.

DECISION

Claimant is not entitled to a bilateral L3-4 facet block 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 **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORP SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 26th day of July, 2008.

Deeia Beck

Hearing Officer