

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 was held on September 30, 2008, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to right C4/5 and C5/6 facet and right suprascapular injections for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by KW, ombudsman. Respondent/Carrier appeared and was represented by HW, adjuster.

BACKGROUND INFORMATION

Claimant injured herself having to operate a bus-door opening device that was difficult to open and close. Eventually, she sustained an injury to her right shoulder and neck. Her treatment has been limited due to several unfortunate personal events in her life. She has had only six physical therapy treatments. She has been diagnosed with cervical radiculitis, cervical spondylosis, cervical osteophytic ridging and disk complex, suprascapular neuritis and ulnar neuropathy. The diagnoses have been confirmed through physical examination, EMG and MRI. Her doctors opine the simplest means of treatment at this point are the right C4/5 and C5/6 facet and right suprascapular injections, because any other possible treatments would be more invasive.

Both URA opinions denied the facet injections based upon the Official Disability Guidelines. They noted the Official Disability Guidelines state cervical facet injections are not recommended where a patient has radicular and/or neurological findings. The case was sent to an IRO. The IRO doctor also denied the facet injections request based upon the cervical radiculopathy. The URA doctors did not address the suprascapular injection but the IRO doctor indicated that a trigger point injection was not recommended by the Official Disability Guidelines either.

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 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.

Regarding the facet injections, the IRO decision properly quotes the provisions of the Official Disability Guidelines, "Limited to patients with cervical pain that is non-radicular and at no more than two levels bilaterally." This is noted whether the block is for diagnostic or therapeutic purposes. Claimant's medical records and testimony clearly indicate she has radicular pain and pathology from the cervical area down to her right hand. The treating doctor did not provide a report addressing the Official Disability Guidelines' criteria and explaining how and why Claimant meets the criteria for use of right C4/5 and C5/6 facet injections. This type of analysis is required to comply with the evidence based medicine standard.

Regarding the suprascapular injection, the IRO decision properly quotes the provisions of the Official Disability Guidelines, "Not recommended in the absence of myofascial pain syndrome." Additionally, the Official Disability Guidelines continues, "The only indication with some positive data is myofascial pain; may be appropriate when myofascial trigger points are present on examination. Trigger point injections are not recommended when there are radicular signs, but they may be used for cervicgia. (Bigos, 1999) (Colorado, 2001) (Nelemans-Cochrane, 2000) (BlueCross BlueShield, 2004)". The medical records do not indicate Claimant has myofascial pain. In addition, if Claimant did have myofascial pain, her radiculopathy would again be a contraindication for this injection. The treating doctor again did not provide a report addressing the Official Disability Guidelines' criteria and explaining how and why Claimant meets the criteria for use of right suprascapular injections.

In the present case, Claimant failed to meet her burden of proof. Claimant failed to provide medical evidence of how her medical records and medical history complied with the Official Disability Guidelines. Claimant's request for medical treatment without sufficient reference to the Official Disability Guidelines 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 that the requested injections do not meet the criteria set out in the Official Disability Guidelines.

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. On _____, Claimant sustained a compensable injury.
- D. The Independent Review Organization determined Claimant should not have right C4/5 and C5/6 facet and right suprascapular injections.
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 has been diagnosed with cervical radicular symptoms.
 4. Per the Official Disability Guidelines, cervical facet injections are limited to patients with cervical pain that is non-radicular and at no more than two levels bilaterally
 5. Per the Official Disability Guidelines, suprascapular injections are not recommended in the absence of myofascial pain syndrome and are not recommended when there are radicular signs.
 6. Claimant failed to establish that her request for right C4/5 and C5/6 facet and right suprascapular injections complied with the Official Disability Guidelines or other evidence based medicine.
 7. The right C4/5 and C5/6 facet and right suprascapular injections are not health care reasonably required 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. The preponderance of the evidence is not contrary to the decision of the IRO that right C4/5 and C5/6 facet and right suprascapular injections are not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to right C4/5 and C5/6 facet and right suprascapular injections 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 §408.021.

The true corporate name of the insurance carrier is **TASB RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

**JAMES B. CROW, SECRETARY
12007 RESEARCH BOULEVARD
AUSTIN, TX 78759**

Signed this 01st day of October, 2008.

KEN WROBEL
Hearing Officer