

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 October 14, 2008 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that Claimant is not entitled to bilateral facet medial nerve blocks for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by YG, Ombudsman.

Carrier appeared and was represented by SB, Attorney.

BACKGROUND INFORMATION

Claimant worked as a physical therapist and she sustained a compensable lumbar injury on _____.

In April 2007, the Carrier denied Claimant's request for facet medial branch blocks. Claimant appealed the Carrier's denial to an independent review organization (IRO). On May 24, 2007, the IRO decision upheld the Carrier's denial.

Claimant subsequently had a disc replacement surgery in December 2007. Following surgery, Claimant received physical therapy and was released to light duty work on February 25, 2008. In May 2008, Dr. H provided a diagnosis of status post artificial disc replacement with possible facet mediated pain. He recommended facet injections. On May 22, 2008, Claimant is evaluated by Dr. S, who provided a diagnosis of lumbar spondylarthritis, bulging lumbar disc and lumbosacral radiculopathy. Dr. S, apparently agreeing with Dr. H, requested bilateral L4-S1 facet medial nerve blocks. This procedure was denied by the Carrier and appealed to the IRO. On July 25, 2008, the IRO decision upheld the Carrier's denial of the lumbar medial nerve blocks. The IRO decision stated:

"According to the Official Disability Guidelines, the criteria for use of diagnostic blocks for facet mediated pain is limited to patients with low back pain that is non-radicular and at no more than two levels bilaterally. Given the multiple pain generators this patient is currently complaining of, the above recommended intervention is not likely to produce substantial pain relief. Therefore, the denial of bilateral L4 through S1 facet medial nerve blocks is upheld."

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 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 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 (ODG), 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 (ODG).

It is noted that in 2007, Claimant requested lumbar medial nerve blocks, the same procedure that is the subject of this dispute. The Carrier objects, based on Division Rule, that a second submission of the same medical procedure must be supported by a substantial change in the Employee's medical condition. Specifically, Division Rule 134.600 (o)(4) reads as follows:

"(4) A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the employee's medical condition. The carrier shall review the documentation and determine if a substantial change in the employee's medical condition has occurred."

I find that the same medical procedure was submitted, initially, in 2007. It was processed through the medical dispute system and denied. The present request submitted in May 2008 is the second request for the same procedure and the above rule requires Claimant to show "a substantial change in the employee's medical condition," in addition to establishing that the health care request is health care reasonably required under the Texas Workers' Compensation Act.

In this case, Claimant did provide evidence of a substantial change of condition after the Carrier's denial of the initial request. After the initial request was denied in May 2007, Claimant had disc replacement surgery in December 2007. The replacement disc surgery and the follow-up medical care after that surgery are sufficient to establish a substantial change of condition under the Division Rule.

Claimant still must show that the preponderance of the medical evidence is contrary to the IRO decision. As noted above, the IRO decision quotes the ODG as the evidence-based medicine to support its determination to deny the nerve blocks requested. In response, Dr. S, by memo dated August 27, 2008, states that he is aware of some studies that have challenged the efficacy of facet medial nerve blocks. He continues that there are other reports that demonstrate

the benefits of those blocks that have been published in studies, as well as mainstay textbooks (Practical Management of Pain, P. Raj, M.D., Page 745). Attached to Dr. S's memo are 8 pages, presumably from the above-referenced textbook. It appears to be Chapter 52, entitled, "Facet Syndromes and Blocks." Dr. S is not limited to the ODG in providing evidence-based medicine to support his request for medical treatment. In a given case, medical textbooks could comply with the evidence-based medicine standard. The problem remains, in this case, that Dr. S has not shown how either the ODG or the textbook authorized the treatment in question. There must be an analysis of how the Claimant's medical condition meets the evidence-based medicine standard, regardless of what evidence-based medicine is used to justify the request for medical treatment. Dr. S should have addressed the criteria for use of lumbar facet nerve blocks in Chapter 52 and explained how Claimant's condition meets the established criteria. That was not done in this case.

Although the IRO decision initially carried presumptive weight, evidence offered by Claimant was not sufficient to meet her burden of proof.

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).
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. The IRO decision upheld the Carrier's denial of the requested bilateral facet medial nerve blocks.
4. Claimant did not provide evidence-based medicine to support the need for bilateral facet medial nerve blocks.
5. Bilateral facet medial nerve blocks 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 medical evidence is not contrary to the IRO decision that Claimant is not entitled to bilateral facet medial nerve blocks for the compensable injury of _____.

DECISION

Claimant is not entitled to bilateral facet medial nerve blocks 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 **ZURICH AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251**

Signed this 27th day of October, 2008.

Donald E. Woods
Hearing Officer