

**MEDICAL CONTESTED CASE HEARING NO. 09086
M6-09-16744-01**

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 January 15, 2009, to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the IRO decision that the Claimant is not entitled to Radiofrequency Thermocoagulation (RFTC) of the facet medial nerve at the L3 through S1 level of the lumbar spine for the compensable injury of _____?
2. Did the Claimant timely appeal the IRO decision by filing a written appeal with the Division's Chief Clerk no later than the 20th day after the date the IRO decision was sent to the appealing parties?

PARTIES PRESENT

Claimant appeared and was assisted by AW, Ombudsman.

Carrier appeared and was represented by DP, Attorney.

BACKGROUND INFORMATION

Claimant worked for an oilfield service company on _____. He was involved in a vehicle accident, injuring his cervical and lumbar spine.

Claimant is receiving pain management treatment from Dr. Bo. Dr. Bo has recommended a repeat Radiofrequency Thermocoagulation (RFTC) of the facet medial nerve at the L3 through S1 levels of the lumbar spine. Claimant had this procedure initially on February 19, 2007. Dr. Bo's records document good pain relief in March 2007 with pain returning by July 2007. Claimant had a second RFTC on August 1, 2007. Dr. Bo's records did not document significant pain relief. In September 2007, Claimant's pain was reduced from a 7 to a 6 on the VAS scale. By October 2007, the pain level had returned to a 7 on the VAS scale, the pain level immediately prior to the RFTC procedure on August 1, 2007.

In October 2008, Dr. Bo requested pre-authorization to perform a third RFTC procedure. Dr. Bo's request and any justification for the request was not made part of the record. On October 7, 2008, the Carrier denied the pre-authorization request for a third RFTC procedure. On October 20, 2008, the Carrier denied Dr. Bo's request for reconsideration. The Claimant or his doctor requested review of the Carrier's denial of pre-authorization by an Independent Review Organization (IRO). Again, Claimant's request for review was not made part of the record.

The IRO issued a decision on November 14, 2008 upholding the Carrier's denial of pre-authorization of the repeat RFTC procedure. The IRO decision was based on Claimant's failure

to comply with the Official Disability Guidelines (ODG) for a repeat RFTC procedure. Claimant has appealed the IRO decision to this MCCH.

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).

Claimant testified at the MCCH. He stated that he received good pain relief from the first RFTC procedure and he hoped the third procedure would provide similar pain relief. Claimant's medical evidence consisted of progress reports from Dr. Bo and Dr. Bu. None of these medical records address the justification for the requested RFTC procedures.

In accordance with DWC Rule 133.308(t), the party appealing the IRO decision has the burden of overcoming the decision issued by the IRO by a preponderance of evidence-based medical evidence. Claimant has failed to meet this burden. The evidence-based medical evidence supports the decision of the IRO.

In regard to the timely appeal issue, DWC Rule 133.308(t)(1)(B)(i) applies and sets out the applicable procedures:

"The written appeal must be filed with the Division's Chief Clerk no later than the later of the 20th day after the effective date of this section or 20 days after the date the IRO decision is sent to the appealing party and must be filed in compliance with Division rules. Requests that are timely submitted to a Division location other than the Division's Chief Clerk, such as a local field office of the Division, will be considered timely filed and forwarded to the Chief Clerk for processing; however, this may result in a delay in the processing of the request."

The record indicates that the IRO decision was sent to the parties on November 15, 2008. This started the 20 day time frame for the Claimant to appeal. The Division's computer records indicate that Claimant contacted the (City) Field Office on November 17, 2008 and that he had received notification of the IRO decision and wanted to appeal. Claimant was advised that a

DWC045A needed to be completed and sent to (City). A DWC045A form was mailed to the Claimant. Claimant received the DWC form. He completed the form and mailed it to (City). The DWC045A form was not received either at the (City) Field Office or the (City) Central Office.

On December 8, 2008, Claimant called the (City) Field Office requesting the status of his appeal of the IRO decision. Follow-up computer records indicate a written request for appeal had never been received by either the Division's Chief Clerk in (City) Central Office or the local field office. Claimant was assisted in resubmitting the DWC045A form and it was received by the Chief Clerk on December 19, 2008.

The DWC Rule quoted above requires a written appeal be received either by the Chief Clerk in the (City) Central Office or a local field office within the 20 day timeframe to appeal. In this case, a written appeal was not received until December 19, 2008. Claimant's appeal was not timely submitted to the Division of Worker's Compensation and his appeal is denied.

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 dated November 14, 2008 upheld the Carrier's denial of Dr. Bo's request to perform a repeat RFTC of the facet medial nerve at the L3 through the S1 levels of the lumbar spine.
4. The preponderance of the evidence-based medical evidence is not contrary to the decision of the IRO.
5. RFTC of the facet medial nerve at the L3 through S1 levels of the lumbar spine is not health care reasonably required for the compensable injury of _____.
6. The IRO decision was sent to the parties on November 15, 2008.
7. Claimant's written appeal was received by the Division of Workers' Compensation on December 19, 2008.
8. Claimant did not file a written appeal of the IRO decision with the Division of Workers' Compensation not later than the 20th day after the IRO decision was sent to the parties.

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 RFTC of the facet medial nerve at the L3 through the S1 levels of the lumbar spine is not health care reasonably required for the compensable injury of _____.
4. Claimant did not timely appeal the IRO decision by filing a written appeal with the Division's Chief Clerk no later than the 20th day after the date the IRO decision was sent to the appealing parties.

DECISION

Claimant is not entitled to RFTC of the facet medial nerve at the L3 through the S1 levels of the lumbar spine for the compensable injury of _____. Claimant did not timely appeal the IRO decision.

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 **TEXAS MUTUAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**RUSSELL OLIVER, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 22nd day of January, 2009.

Donald E. Woods
Hearing Officer