

**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 April 30, 2009 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 Lumbar ESI and right and left lumbar radiofrequency neurotomy (RFTC) at L1-L2, L2-L3, and L3-L4 for the compensable injury of \_\_\_\_\_?

Upon agreement of the parties, Issue Number 1 above was revised as follows:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to right and left lumbar radiofrequency neurotomy (RFTC) at L1-L2, L2-L3, and L3-L4 for the compensable injury of \_\_\_\_\_.

**PARTIES PRESENT**

Claimant appeared and was assisted by SFG, ombudsman. The Petitioner/Provider, Dr. KB, appeared as a witness in this matter. Respondent/Carrier appeared and was represented by DP, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable lumbar spine injury on \_\_\_\_\_. Claimant underwent a lumbar spine CT Scan on November 13, 2001 that revealed early degenerative changes of the facet joints at L5-S1. The claimant underwent a bilateral lumbar radiofrequency neurotomy (RFTC) at L1-L2, L2-L3, and L3-4 on December 20, 2006, which provided her with some relief. An MRI was performed on August 13, 2007 that revealed spondylosis and disc desiccation at T12-L1, L1-L2, L4-L5, and L5-S1. The claimant currently complains of ongoing back pain with numbness in her right leg. The claimant treating doctor, Dr. KB, is recommending a repeat bilateral facet joint RFTC at L1-L2, L2-L3, and L3-L4. This procedure was denied twice by the Carrier's utilization review department and the request was appealed to the IRO. The IRO, a board certified orthopedic surgeon, upheld the carrier's denial.

The Independent Review Organization (IRO) provided the following analysis and explanation of its decision:

"ESI's and RFTC are not medically necessary. ODG criteria restrict the usage of ESI's to patients with objective signs of radiculopathy, which the patient does not have. RFTC is under study,

according to the ODG, and therefore not medically necessary. Additionally, Dr. KB performed these procedures (RFTC) in December, 2006 and documented poor response at that time."

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. Section 401.011(18-a) defines "evidence-based medicine" 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 healthcare 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.

**Under the ODG, in reference to RFTC's, the recommendation is:**

"Under study. Conflicting evidence is available as to the efficacy of this procedure and approval of treatment should be made on a case-by-case basis (only 3 RCTs) with one suggesting pain benefit without functional gains, potential benefit if used to reduce narcotics). Studies have not demonstrated improved function. Also called Facet rhizotomy, radiofrequency medial branch neurotomy, or Radiofrequency ablation (RFA), this is a type of injection procedure in which a heat lesion is created on specific nerves to interrupt pain signals to the brain, with a medial branch neurotomy affecting the nerves carrying pain from the facet joints."

**Criteria for use of facet joint radiofrequency neurotomy:**

- "(1) Treatment requires a diagnosis of facet joint pain using a medial branch block as described above. See Facet joint diagnostic blocks (injections).
- (2) While repeat neurotomies may be required, they should not occur at an interval of less than six months from the first procedure. A neurotomy should not be repeated unless duration of relief from the first procedure is documented for at least 12 weeks at  $\geq 50\%$  relief. The current literature does not support that the procedure is successful without sustained pain relief (generally of at least 6 months duration). No more than 3 procedures should be performed in a year's period.
- (3) Approval of repeat neurotomies depends on variables such as evidence of adequate diagnostic blocks, documented improvement in VAS score, and documented improvement in function.
- (4) No more than two joint levels are to be performed at one time.
- (5) If different regions require neural blockade, these should be performed at intervals of no sooner than one week, and preferably 2 weeks for most blocks.
- (6) There should be evidence of a formal plan of additional evidence-based conservative care in addition to facet joint therapy."

The Petitioner/Provider, Dr. KB, a board certified orthopedic surgeon, testified in this matter and stated that he was requesting a repeat neurotomy because the claimant had significant relief for approximately twelve months and he felt the previous procedure was successful. Dr. KB stated that he believed the claimant met the criteria as provided in the ODG. The claimant also testified that she felt the procedure helped her condition and that she desired to have it done again. However, the medical records from Dr. KB contradict the testimony provided during the medical contested case hearing. The medical report of Dr. KB dated January 20, 2007 indicated that the claimant had only 30% relief from the first RFTC. On February 21, 2007, Dr. KB's report indicated that the claimant was still having pain in her back and right lower extremity and numbness in her lumbar spine and Dr. KB recommends a chronic pain program. Dr. KB's records during the year following the first RFTC procedure document the continued need for pain medications and sleep aids to help her deal with the pain in her lumbar spine and right lower extremity.

The carrier's expert, Dr. CC, a board certified orthopedic surgeon, agreed with the decision of the IRO and provided sound reasoning for the denial of the procedure. Dr. CC testified that Dr. KB's request did not meet the requirement of the ODG for the following reasons: the medical records did not document 50% or greater relief from the first procedure, there is no indication in the records as to what the claimant's VAS score was prior to the procedure or how it improved, the ODG requires that the procedure only be performed at two levels and Dr. KB was requesting three levels, the claimant's physical examination are variable and inconsistent, and there is no confirmatory evidence of facet joint disease.

The party appealing the IRO decision, has the burden of overcoming the IRO decision by a preponderance of evidence-based medical evidence. The IRO decision in this case is based on the ODG and noted that the Claimant's medical records failed to establish the necessary criteria as prescribed in the ODG. The claimant and petitioner failed to meet their burden in this matter. The preponderance of evidence based medicine is not contrary to the decision of the IRO that the claimant is not entitled to a repeat bilateral facet joint RFTC at L1-L2, L2-L3, and L3-L4.

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. Claimant sustained a compensable injury on \_\_\_\_\_.
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. Right and left lumbar radiofrequency neurotomy (RFTC) at L1-L2, L2-L3, and L3-L4 is not healthcare 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 and left lumbar radiofrequency neurotomy (RFTC) at L1-L2, L2-L3, and L3-L4 is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to right and left lumbar radiofrequency neurotomy (RFTC) at L1-L2, L2-L3, and L3-L4 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 **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 13th day of May, 2009.

Jacquelyn Coleman  
Hearing Officer