

**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 March 17, 2009, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to outpatient lumbar facet joint nerve blocks at L4-S1, first the right side followed by the left side for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by AT, Ombudsman.

Carrier appeared and was represented by MP, Attorney.

**BACKGROUND INFORMATION**

Claimant worked as a heavy equipment operator for the Employer. He injured his lower back in a lifting incident on \_\_\_\_\_.

Claimant had a microdiscectomy at L4-5 in February 2003. He has been in an active pain management program with Dr. D since early 2006. This has included physical therapy, pain medication, nerve root injections and facet joint nerve injections.

Claimant experienced an increased level of pain over the summer of 2008. He received nerve root injections on August 20, 2008. Although this procedure had been helpful in controlling pain in the past, this particular treatment provided little, if any, relief of the lumbar and radicular pain. In response, Dr. D has requested pre-certification for treatment with lumbar facet joint nerve blocks at L4-S1; first the right side followed by the left side. This treatment was denied by the Carrier, both initially and on reconsideration. Claimant requested review by an Independent Review Organization (IRO).

The IRO issued a decision on December 23, 2008 upholding the Carrier's denial of the requested treatment. Claimant has appealed this IRO decision to a Medical Contested Case Hearing (MCCH). The Petitioner is seeking reversal of an adverse determination by the IRO that Claimant is not entitled to outpatient lumbar facet joint nerve blocks at L4-5, first the right side followed by the left side.

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).

The IRO decision provides very little justification for its decision. The IRO decision correctly notes that Claimant has had positive results from facet nerve blocks in the past. The decision then concludes that Claimant does not meet the ODG criteria for facet joint nerve blocks. The decision does not discuss the ODG criteria for facet joint nerve blocks and fails to identify what ODG criteria the Claimant failed to meet. Although the IRO decision is brief and quite limited, it is the decision of the IRO.

Division Rule 133.308(t) provides that the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence. This rule not only sets the burden of proof on the petitioner, it also restricts the quality of that evidence to meet that burden. The focus is not on the preponderance of the medical evidence, but on the preponderance of the evidence-based medical evidence.

The Petitioner attempts to meet this burden by presenting medical records from the treating doctor, diagnostic tests, physical therapy records, and operative notes. In addition, Petitioner provides a well drafted 8-page request for pre-certification of the medical procedure. Also provided is a 3-page request for reconsideration dated October 27, 2008. These are all very credible reports from the treating doctor and his staff. These reports do not mention any evidence-based medical evidence. They make no reference to the ODG or any other medical guideline. Although the IRO decision was quite limited, it does take some evidence-based medical evidence to overcome the decision. There was none presented in this case.

I find that the preponderance of the evidence is not contrary to the decision of the IRO and that Claimant is not entitled to outpatient lumbar facet joint nerve blocks at L4-S1.

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. Outpatient lumbar facet joint nerve blocks at L4-S1 are not reasonably required medical treatment 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 Claimant is not entitled to outpatient lumbar facet joint nerve blocks at L4-S1, first the right side followed by the left side for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to outpatient lumbar facet joint nerve blocks at L4-S1, first the right side followed by the left side 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 **(EMPLOYER)**, and the name and address of its registered agent for service of process is:

**(NAME)**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIP CODE)**

Signed this 26th day of March, 2009.

Donald E. Woods  
Hearing Officer