

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 May 7, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the bilateral facet injection at L4/L5 and L5/S1 with fluoroscopic guidance, epidurogram, and general anesthesia is not reasonably necessary health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by ombudsman DS. Carrier/Respondent appeared and was represented by attorney KP.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable lumbar spine injury while employed as a driver when she had to slam on her brakes when an 18-wheeler pulled out in front of her, causing her vehicle to roll three times. Claimant received bilateral L4/L5 facet joint injections in July of 2006, and these injections were noted to have "helped decrease the pain for 6-8 months." There was no mention as to what percentage of pain relief Claimant actually received or if there was any increase in function. Based on the fact that Claimant had received significant pain relief for 6-8 months, a repeat bilateral L4/L5 and L5/S1, with fluoroscopic guidance, has been requested along with general anesthesia and an epidurogram.

The request was denied by Carrier. On July 14, 2008, an IRO medical doctor who is board certified in Pain Management and Anesthesiology, reviewed the requested procedure of bilateral facet injection at L4/L5 and L5/S1, with fluoroscopic guidance, epidurogram, and anesthesia. In a report dated July 14, 2008, the IRO doctor upheld the denial.

Texas Labor Code § 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 §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 § 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 applicable ODG section for the requested procedure, and the section utilized by the IRO doctor, is the entry for "Facet joint injections, lumbar." As it relates to facet joint pain, signs and symptoms, that section of the ODG provides:

Recommend diagnostic criteria below. Diagnostic blocks are required as there are no findings on history, physical or imaging studies that consistently aid in making this diagnosis. Controlled comparative blocks have been suggested due to the high false-positive rates (17% to 47% in the lumbar spine), but the use of this technique has not shown to be cost-effective or to prevent a false-positive response to a facet neurotomy. (Bogduk, 2005) (Cohen, 2007) (Bogduk, 2000) (Cohen2, 2007) Mancchukonda, 2007) (Dreyfuss, 2000) (Manchikanti, 2003). The most commonly involved lumbar joints are L4-5 and L5-S1. (Dreyfuss, 2003). In the lumbar region, the majority of patients have involvement in no more than two levels. (Manchikanti, 2004).

Mechanism of injury: The cause of this condition is largely unknown, but suggested etiologies have included microtrauma, degenerative changes, and inflammation of the synovial capsule. The overwhelming majority of cases are thought to be the result of repetitive strain and/or low-grade trauma accumulated over the course of a lifetime. Less frequently, acute trauma is thought to be the mechanism, resulting in tearing of the joint capsule or stretching beyond physiologic limits. Osteoarthritis of the facet joints is commonly found in association with degenerative joint disease (Cohen, 2007).

Suggested indicators of pain related to facet joint pathology (acknowledging the contradictory findings in current research):

- (1) Tenderness to palpation in the paravertebral areas (over the facet region);
- (2) A normal sensory examination;
- (3) Absence of radicular findings, although pain may radiate below the knee;
- (4) Normal straight leg raising exam.

Indicators 2-4 may be present if there is evidence of hypertrophy encroaching on the neural foramen.

The IRO reviewer noted that it was difficult to determine exactly where the Claimant's pain was originating based on the information provided. The IRO reviewer stated that per the *Official Disability Guidelines*, it is suggested that facet joints are the cause of pain if there is tenderness to palpation in the paravertebral areas over the facet joint regions. It is also suggested that there be a normal straight leg exam which is not the case in this situation. *Official Disability*

Guidelines also go on to state that for the use of therapeutic facet joint there should be no evidence of radicular pain. Since this patient has a positive straight leg raise, it appears that this patient has a radicular type pain. The request for an epidurogram does not make sense because the epidural space is not accessed during a facet joint injection. In addition, this patient does not have a medical history that would require general anesthesia.

Claimant failed to present evidence based medicine from a competent source to overcome the IRO's determination. When asked to provide the percentage of pain relief Claimant received from the facet injections of July 2006, Dr. BM, RN, with (Health Care Provider) replied that the test in question was not performed by Dr. AM, and that he had no response to this question. Dr. BM also had no evidence based medicine to offer when asked to refute the IRO reviewer's opinion that according to the ODG there should be tenderness to palpation and there should also be a normal straight leg raise to justify facet injections. Dr. BM also could not provide any evidence based medicine to refute the IRO reviewer's opinion that the request for epidurogram did not make sense because the epidural space was not accessed during a facet injection. Dr. BM's response was, "The procedure requested was miscoded. The request was supposed to be for facet injections and not an epidural steroid injection. I agree facets would not help if we were attempting to treat with ESI."

Based upon the preponderance of the evidence, Claimant is not entitled to bilateral facet injections at L4/L5 and L5/S1, with fluoroscopic guidance, epidurogram and general anesthesia for the compensable injury of _____.

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), and sustained a compensable injury.
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. Bilateral facet injections at L4/L5 and L5/S1, with fluoroscopic guidance, epidurogram, and general anesthesia is 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 Claimant is not entitled to bilateral facet injections at L4/L5 and L5/S1, with fluoroscopic guidance, epidurogram, and general anesthesia for the compensable injury of _____.

DECISION

Claimant is not entitled to bilateral facet injections at L4/L5 and L5/S1, with fluoroscopic guidance, epidurogram, and general anesthesia 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 **ACE AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST SUITE 300
IRVING, TX 75063**

Signed this 11th day of May, 2009

Cheryl Dean
Hearing Officer