

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 June 2, 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 a right cervical facet injection for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by PB, ombudsman.
Respondent/Carrier appeared and was represented by JL, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable cervical spine injury _____ while removing a cabinet from a shelf. Claimant has received medications, physical therapy, injections and eventually underwent an anterior cervical decompression and fusion at C3-C4 and C4-C5. Claimant has been diagnosed with failed cervical spine surgery syndrome, multilevel cervical facet joint arthropathy and cervical radicular pain. Claimant's pain management doctor, Dr. S, recommended a right cervical facet injection at C2 - C7 to provide pain relief. . This procedure was denied twice by the Carrier's utilization review agent and the request was appealed to the IRO. The IRO, board certified in anesthesiology and pain management, upheld the carrier's denial.

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

"The current request for a right cervical facet joint injection does not specify what levels would be injected. Assuming that the physician would be injecting the same levels that were performed in the pat which included the C2-C7 facet joints, this procedure would not be indicated. It is noted that per the Official Disability Guidelines no more than two levels should be injected at one time. In addition, it states that patients with radicular pain should not be receiving this procedure either. On the most recent office visit note dated 10/22/08, the patient complained of pain that radiated into the bilateral upper extremities. The Official Disability Guidelines state that facet joint blocks should not be performed at a level that was previously fused. As stated above, the patient had received a C3-C5 fusion. Assuming the levels requested are C2-C7, this would include the previously fused levels. Given all of these issues, this procedure in not indicated at this time. The reviewer finds that medical necessity does not exist for right cervical facet injections."

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.

With regard to facet joint therapeutic steroid injections, the ODG provides as follows:

Not recommended. There is one randomized controlled study evaluating the use of therapeutic intra-articular corticosteroid injections. The results showed that there was no significant difference between groups of patients (with a diagnosis of facet pain secondary to whiplash) that received corticosteroid vs. local anesthetic intra-articular blocks (median time to return of pain to 50%, 3 days and 3.5 days, respectively). (Barnsley, 1994) There is only one prospective, non-randomized study evaluating the use of medial branch blocks for chronic cervical pain (diagnosed with comparative, controlled blocks that were performed under “light sedation”). The trial did not differentiate the results between patients that received local anesthetic from those that received steroids, and all patients received Sarapin with in their injectate. (Nelemans-Cochrane, 2000) (Manchikanti, 2004) (Manchikanti, 2003) (Boswell, 2007)

While not recommended, criteria for use of therapeutic intra-articular and medial branch blocks, if used anyway:

Clinical presentation should be consistent with facet joint pain, signs & symptoms.

1. There should be no evidence of radicular pain, spinal stenosis, or previous fusion.
2. If successful (initial pain relief of 70%, plus pain relief of at least 50% for a duration of at least 6 weeks), the recommendation is to proceed to a medial branch diagnostic block and subsequent neurotomy (if the medial branch block is positive).
3. When performing therapeutic blocks, no more than 2 levels may be blocked at any one time.
4. If prolonged evidence of effectiveness is obtained after at least one therapeutic block, there should be consideration of performing a radiofrequency neurotomy.

5. There should be evidence of a formal plan of rehabilitation in addition to facet joint injection therapy.
6. No more than one therapeutic intra-articular block is recommended.

To meet his burden of proof in this matter, the claimant offered his testimony and medical records concerning his treatment and diagnostic tests. The claimant also offers a narrative report from the requesting doctor, Dr. S, dated May 28, 2009. In his narrative report, Dr. S indicates that the requested treatment is inconsistent with the requirements of the ODG, but states that the claimant's medical case is difficult to treat and medicine is not straight forward and requires judgment and experience. Dr. S did not provide scientific and medical evidence formulated from credible sources. The claimant failed to show by a preponderance of evidence based medicine that the requested procedure healthcare reasonably required for the compensable injury.

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 _____.
 - D. The Independent Review Organization determined that the claimant should not have the right cervical facet injection.
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. A right cervical facet injection 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 a right cervical facet joint injection is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a right cervical facet injection 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 23rd day of June, 2009.

Jacquelyn Coleman
Hearing Officer