

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 September 23, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a bilateral L3-L4 median branch block with fluoroscopy for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by AC, ombudsman.
Respondent/Carrier appeared and was represented by MM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his lumbar spine on _____ after lifting heavy wheels. Claimant underwent a lumbar laminectomy and fusion at L4-L5 and L5-S1 in 1996. Claimant has received treatment in the form of physical therapy, psychology, TENS unit, chronic pain management and prescription medication for treatment of the compensable injury. Claimant's treating doctor recommended bilateral L1-L2 transforaminals under fluoroscopy in April 2009 but the request for authorization that was submitted for approval was a bilateral L3-L4 median branch block with fluoroscopy which was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a licensed DO specializing in physical medicine and rehabilitation, upheld the previous adverse determination noting that the request for L3-L4 median branch blocks is not supported. The IRO reviewer cited the Official Disability Guidelines (*ODG*) and specifically stated that the provider reports radicular pain in L1-L2 distribution on exam, which does not support median branch blocks.

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 ODG. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), 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."

Pursuant to the *ODG*, the recommendations for facet blocks are as follows:

Criteria for the use of diagnostic blocks for facet “mediated” pain:

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

1. One set of diagnostic medial branch blocks is required with a response of $\geq 70\%$. The pain response should be approximately 2 hours for Lidocaine.
2. Limited to patients with low-back pain that is non-radicular and at no more than two levels bilaterally.
3. There is documentation of failure of conservative treatment (including home exercise, PT and NSAIDs) prior to the procedure for at least 4-6 weeks.
4. No more than 2 facet joint levels are injected in one session (see above for medial branch block levels).
5. Recommended volume of no more than 0.5 cc of injectate is given to each joint.
6. No pain medication from home should be taken for at least 4 hours prior to the diagnostic block and for 4 to 6 hours afterward.
7. Opioids should not be given as a “sedative” during the procedure.
8. The use of IV sedation (including other agents such as midazolam) may be grounds to negate the results of a diagnostic block, and should only be given in cases of extreme anxiety.
9. The patient should document pain relief with an instrument such as a VAS scale, emphasizing the importance of recording the maximum pain relief and maximum duration of pain. The patient should also keep medication use and activity logs to support subjective reports of better pain control.
10. Diagnostic facet blocks should not be performed in patients in whom a surgical procedure is anticipated. (Resnick, 2005)
11. Diagnostic facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level.

The Claimant testified that he continues to suffer from low back pain and pain radiating to his lower extremities. In a letter dated August 24, 2009, Claimant's treating doctor stated, "...in this case the presence of this disease process would render necessary the performance of bilateral L1-2 transforaminal epidural steroid injection under fluoroscopic guidance and IV sedation as regular epidurals only can go to the nerve root 20 to 40 percent of the time." Claimant's treating doctor concluded that bilateral L1-L2 transforaminals are medically necessary to treat the

Claimant's injury. Claimant's treating doctor did not address the appealed requested procedure of a bilateral L3-L4 median branch block. It appears from the documentary evidence that the treating doctor intended injections to be administered at the L1-L2 level not the L3-L4 level as requested. Nonetheless, the Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision regarding the requested procedure of a bilateral L3-L4 median branch block. Therefore, Claimant has not met the requisite evidentiary standard required to overcome the IRO decision and the preponderance of the evidence is not contrary to the IRO decision that the Claimant is not entitled to a bilateral L3-L4 median branch block with fluoroscopy 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 the (Self-Insured), Employer.
 - C. Claimant sustained a compensable injury to his lumbar spine 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. The Claimant failed to prove that he meets the requirements in the *ODG* for a bilateral L3-L4 median branch block with fluoroscopy and the requested procedure is not consistent with the recommendations in the *ODG*.
4. The requested bilateral L3-L4 median branch block with fluoroscopy 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 bilateral L3-L4 median branch block with fluoroscopy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a bilateral L3-L4 median branch block with fluoroscopy 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 the **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**(MAYOR OF CITY)
(STREET ADDRESS)
(CITY), TX (ZIP CODE)**

Signed this 23rd day of September, 2009.

Carol A. Fougerat
Hearing Officer