

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 11, 2009, to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to one cervical spine Botox injection in the amount of 200 units for the compensable injury of _____?
2. Was the IRO decision timely appealed?

PARTIES PRESENT

Claimant/Petitioner appeared and was assisted by SB, Attorney.
Carrier/Respondent appeared and was represented by RR, Attorney.

BACKGROUND INFORMATION

Claimant injured his cervical spine in a lifting incident on _____. He received a 4% impairment rating (IR) for the cervical spine injury in 1992.

On March 23, 2009, Claimant's present treating doctor requested precertification for a Botox injection. The diagnosis provided in the precertification form was sprain/strain of the neck and shoulder pain. The Carrier denied the request. Following a reconsideration denial by the Carrier, the Claimant requested review by an Independent Review Organization (IRO).

The IRO issued a decision on May 27, 2009 and upheld the Carrier's denial of the medical procedure. The IRO decision relied on the criteria set out in the Official Disability Guidelines (ODG). The IRO doctor points out that the ODG authorizes Botox injection in the cervical spine for treatment of Cervical Dystonia only and the requesting doctor has not provided a diagnosis of Cervical Dystonia.

Claimant appealed the IRO decision on July 2, 2009 and requested a Medical Contested Case Hearing (MCCH).

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."

The ODG deals with Botox injections under the name of Botulism toxin injections. The information provided is rather brief and reads as follows:

Recommended for cervical dystonia, but not recommended for mechanical neck disorders, including whiplash. See more details below.

Not recommended for the following: headache; fibromyositis; chronic neck pain; myofascial pain syndrome; & trigger point injections. Several recent studies have found no statistical support for the use of Botulinum toxin A (BTX-A) for the treatment of cervical or upper back pain, including the following:

- Myofascial analgesic pain relief as compared to saline. ([Qerama, 2006](#))
- Use as a specific treatment for myofascial cervical pain as compared to saline. ([Ojala, 2006](#)) ([Ferrante, 2005](#)) ([Wheeler, 1998](#))
- Injection in myofascial trigger points as compared to dry needling or local anesthetic injections. ([Kamanli, 2005](#)) ([Graboski, 2005](#)).

Recent systematic reviews have stated that current evidence does not support the use of BTX-A trigger point injections for myofascial pain. ([Ho, 2006](#)) Or for mechanical neck disease (as compared to saline). ([Peloso-Cochrane, 2006](#)) There is one recent study that has found statistical improvement with the use of BTX-A compared to saline. Study patients had at least 10 trigger points and no patient in the study was taking an opioid. ([Gobel, 2006](#)) Botulinum toxin A (e.g., Botox) remains under study for treatment of chronic whiplash associated disorders and no statistical difference has been found when compared to treatment with placebo at this time. ([Freund, 2000](#)) ([Aetna, 2005](#)) ([Blue Cross Blue Shield, 2005](#)) ([Juan, 2004](#))

Recommended: cervical dystonia, a condition that is not generally related to workers' compensation injuries (also known as spasmodic torticollis), and is characterized as a movement disorder of the nuchal muscles, characterized by tremor or by tonic posturing of the head in a rotated, twisted, or abnormally flexed or extended position or some combination of these positions. In recent years, botulinum toxin type A has become first line therapy for cervical dystonia. When treated with BTX-B, high antigenicity limits long-term efficacy. Botulinum toxin A injections provide more objective and subjective benefit than trihexyphenidyl or other anticholinergic drugs to patients with cervical dystonia. ([Costa-Cochrane, 2005](#)) ([Costa2-Cochrane, 2005](#)) ([Costa3-Cochrane, 2005](#)) ([Jankovic, 2006](#)) ([Lew, 1997](#)) ([Trosch, 2001](#)) ([Balash, 2004](#)) ([Sycha, 2004](#)) ([Peloso, 2007](#)) ([Scott, 2005](#)) ([Scott, 2008](#)) ([Ho, 2007](#))

The medical records of Claimant prior to the IRO decision of May 27, 2009 do not provide a diagnosis of Cervical Dystonia. In addition, Claimant's medical records do not document the unique features associated with Cervical Dystonia, i.e., tremor or tonic posturing of the head in a rotated, twisted or abnormally flexed or extended position.

On July 14, 2009, Claimant's treating doctor provided a report contending that Claimant does have Cervical Dystonia. This report fails to explain how Claimant's recent diagnosis of Cervical Dystonia was caused by the cervical strain/sprain of _____.

While both parties rely on the ODG, the preponderance of the evidence-based medical evidence is not contrary to the IRO decision that Claimant is not entitled to the Botox injections that are the subject of this hearing.

In regard to the timely appeal issue, the Claimant testified that he received notice of the IRO decision from his doctor on May 29, 2009. He called the local field office and talked to his assigned point of contact. He notified that person, an employee of the Division of Workers' Compensation, that he disagreed with the IRO decision. Claimant testified that he believed his contact with the field office on May 29, 2009 was sufficient to appeal the IRO decision. Claimant testified that he found out later from the Ombudsman that his appeal had not been processed. He filed a DWC Form 45A appealing the IRO decision on July 2, 2009, a period of more than 20 days after receipt of the IRO decision. Claimant's appeal was not timely filed and is dismissed.

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. The IRO decision dated May 27, 2009 found that Claimant's request for Botox injection in the cervical spine did not meet the criteria set out in the ODG.
4. Claimant filed a written request for appeal of the IRO decision with the Division on July 2, 2009, a period of more than 20 days after the decision had been mailed to the Claimant.
5. One cervical spine Botox injection in the amount of 200 units 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 one cervical spine Botox injection in the amount of 200 units is not health care reasonably required for the compensable injury of _____.
4. The IRO decision was not timely filed and is hereby dismissed.

DECISION

Claimant is not entitled to one cervical spine Botox injection in the amount of 200 units for the compensable injury of _____. The IRO decision was not timely appealed and is hereby dismissed.

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 **ASSOCIATED INDEMNITY CORPORATION**, and the name and address of its registered agent for service of process is:

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 18th day of September, 2009.

Donald E. Woods
Hearing Officer