

**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.

**ISSUE**

A contested case hearing was held on September 21, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to bilateral cluneal radiofrequency thermocoagulation for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by YG, ombudsman.  
Respondent/Carrier was represented by RJ, attorney.

**BACKGROUND INFORMATION**

Claimant was injured on \_\_\_\_\_ during the course and scope of employment when she caught and held a 250 pound patient who was falling.

Claimant testified that Dr. S wants to perform a procedure that will burn the nerves that transmit sensation of pain to her brain. The procedure is called bilateral cluneal radiofrequency thermocoagulation. Carrier denied the request and was successful in the IRO process.

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 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.

In upholding the previous adverse decision, the IRO commented that Claimant's pain is not confined to the cluneal nerves and that medial branch blocks had brought Claimant's pain down significantly. The IRO noted that Claimant continued to have low back pain and hip pain after radiofrequency thermocoagulation from L3 to S1.

The IRO asserted that the ODG does not address bilateral cluneal radiofrequency thermocoagulation, the requested procedure. Neither party challenged the assertion. The ODG does mention facet joint radiofrequency neurotomy which is under study and for which studies have not demonstrated improved function in patients.

The IRO also asserted that there are no high quality peer reviewed medical studies supporting the use of cluneal nerve radiofrequency ablation for chronic low back or buttock pain related to a history of failed back surgery syndrome. The IRO relied on the American College of Occupational & Environmental Medicine UM Knowledge Base (ACOEM), citing Guidelines, Chapter 12 (Revised 2007) pages 189-190 that indicate radiofrequency neurotomy, neurotomy, and facet rhizotomy are not recommend for the treatment of any spinal condition. In conclusion, the IRO wrote that the treatment would be experimental and not medically necessary.

Part of Claimant's documentary evidence was a letter dated July 1, 2009 from Dr. S. The doctor explained that Claimant developed axial back pain following lumbar disc replacement surgery in December of 2007. He wrote that the pain can develop, after surgery, when cluneal nerves become irritated. He opined that Claimant would gain prolonged relief of pain from the requested procedure because she experienced significant temporary pain relief from bilateral cluneal nerve blocks.

Claimant failed to meet her burden of proof. Dr. S' opinion was not supported by evidence-based medical evidence to support the appropriateness of the proposed procedure.

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, who was the employee of (Employer), sustained a compensable injury.
  - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of \_\_\_\_\_.

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 cluneal radiofrequency thermocoagulation is not health care reasonably required for the compensable injury of \_\_\_\_\_ because it is experimental and studies do not show its appropriateness.

### **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 bilateral cluneal radiofrequency thermocoagulation is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to bilateral cluneal radiofrequency thermocoagulation 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 Section 408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
3232 AUSTIN, TEXAS 78701-3232**

Signed this 1st day of October, 2009.

CAROLYN F. MOORE  
Hearing Officer