

**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 October 27, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that a right thoracic neurotomy at T5-T6 and T7-T8 is not health care reasonably necessary for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by TM, ombudsman.  
Respondent/Carrier appeared and was represented by JC, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on \_\_\_\_\_, and has undergone epidural steroid injections, medication, and radiofrequency neurotomies for the injury. Claimant's treating doctor, Dr. C, requested preauthorization for a right thoracic neurotomy at T5-T6 and T7-T8 in June of 2009. Carrier denied the request and Claimant appealed the denial. In accordance with Texas Labor Code Section 413.031(d) and Division Rule 133.308(k), (Independent Review Organization) was selected by the Texas Department of Insurance as the Independent Review Organization (IRO) to review Carrier's denial. On August 25, 2009, the IRO issued its decision, finding that Carrier's denial should be upheld.

Claimant requested a Contested Case Hearing (CCH) to appeal the IRO's decision. 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 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.

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. The commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, and outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. (Texas Labor Code Section 413.011(e).) Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable. (Texas Labor Code Section 413.017(1).)

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.

The ODG addresses the use of facet joint radiofrequency neurotomy in the cervical spine and lumbar spine, but does not have a corresponding entry for facet joint radiofrequency neurotomy in the thoracic spine. Claimant offered a preliminary report abstract published in the July-August 2008 edition of *Pain Physician* that discussed the effectiveness of thoracic medial branch blocks in managing chronic pain. She did not offer expert witness analysis of that article. The subjects of the study did not undergo radiofrequency neurotomies and there was no expert witness testimony that would tend to show the relevance of that study to the requested procedure in this matter.

Carrier argues that Claimant failed to provide documentation of pain relief that would warrant repeat thoracic radiofrequency neurotomy as requested. The criteria cited by Carrier appear in the ODG entries for facet joint radiofrequency neurotomy in the lumbar spine. That entry provides the following criteria for approval of repeat facet joint radiofrequency neurotomy:

**Criteria for use of facet joint radiofrequency neurotomy:**

- (1) Treatment requires a diagnosis of facet joint pain using a medial branch block as described above. See Facet joint diagnostic blocks (injections).
- (2) While repeat neurotomies may be required, they should not occur at an interval of less than 6 months from the first procedure. **A neurotomy should not be repeated unless duration of relief from the first procedure is documented for at least 12 weeks at  $\geq$  50% relief. The current literature does not support that the procedure is successful without sustained pain relief (generally of at least 6 months duration).** No more than 3 procedures should be performed in a year's period. (Emphasis added.)
- (3) Approval of repeat neurotomies depends on variables such as evidence of adequate diagnostic blocks, documented improvement in VAS score, and documented improvement in function.
- (4) No more than two joint levels are to be performed at one time.
- (5) If different regions require neural blockade, these should be performed at intervals of no sooner than one week, and preferably 2 weeks for most blocks.
- (6) **There should be evidence of a formal plan of additional evidence-based conservative care in addition to facet joint therapy.** (Emphasis added.)

Similarly, the ODG entry for facet joint radiofrequency neurotomy of the neck and upper back states:

**Criteria for use of cervical facet radiofrequency neurotomy:**

1. Treatment requires a diagnosis of facet joint pain. See Facet joint diagnostic blocks.
2. Approval depends on variables such as evidence of adequate diagnostic blocks, documented improvement in VAS score, and documented improvement in function.
3. No more than two joint levels are to be performed at one time (See Facet joint diagnostic blocks).
4. If different regions require neural blockade, these should be performed at intervals of not sooner than one week, and preferably 2 weeks for most blocks.
5. There should be evidence of a formal plan of rehabilitation in addition to facet joint therapy.
6. While repeat neurotomies may be required, they should not be required at an interval of less than 6 months from the first procedure. Duration of effect after the first neurotomy should be documented for at least 12 weeks at  $\geq 50\%$  relief. The current literature does not support that the procedure is successful without sustained pain relief (generally of at least 6 months duration). No more than 3 procedures should be performed in a year's period.

Dr. C's medical records state that Claimant meets the ODG requirements for repeat thoracic radiofrequency neurotomy, but there is an absence of VAS scores documenting the amount of pain relief from prior neurotomies, there is no evidence of a formal plan of rehabilitation after the proposed neurotomies, and there is no written or testimonial evidence from a qualified expert to show how or why the IRO physician reviewer erred in denying the request for approval of right radiofrequency neurotomies at T5-6 and T7-8.

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. Claimant sustained a compensable injury on \_\_\_\_\_, while employed by (Employer) aka (Employer), Employer.
  - C. (Independent Review Organization) was selected by the Texas Department of Insurance as the Independent Review Organization to review Carrier's denial of the request for preauthorization of a right thoracic neurotomy at T5-T6 and T7-T8.

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. Claimant failed to provide written or testimonial evidence from a qualified expert to show how or why the requested right thoracic radiofrequency neurotomies at T5-6 and T7-8 is clinically appropriate and considered effective for the injured employee's injury in accordance with best practices consistent with evidence based medicine.
4. A right thoracic neurotomy at T5-T6 and T7-T8 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 thoracic neurotomy at T5-T6 and T7-T8 is/is not health care reasonably required for the compensable injury of \_\_\_\_\_.

#### **DECISION**

Claimant is not entitled to right thoracic radiofrequency neurotomies at T5-6 and T7-8 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 **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA**, and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 N. ST. PAUL STREET  
DALLAS, TX 75201.**

Signed this 28th day of October, 2009

KENNETH A. HUCTION  
Hearing Officer