

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 December 17, 2010 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 radiofrequency injections at right T12, L1, L2, L3, L4, L5 and S1 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by NG, ombudsman.
Respondent/Carrier appeared and was represented by LM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable lumbar spine injury on _____ when he slipped and fell. Claimant underwent several surgeries as a result of this injury including a lumbar fusion at L4 through S1. On January 14, 2010, Claimant underwent radiofrequency injections on the right at T12 through S1. The Claimant testified that the injections resulted in a 65% improvement in his low back pain which lasted approximately four months. Claimant testified that he was also able to reduce his pain medications after these injections. Claimant testified that his back pain has increased and he has resumed his pain medications. Claimant's treating doctor, Dr. B, recommended radiofrequency injections on the right at T12 through S1. The Carrier denied this request and Claimant sought review by an IRO. The IRO decision issued on October 15, 2010 upheld the Carrier's denial citing the Official Disability Guidelines (ODG) and providing a detailed analysis of the explanation for the denial. The IRO reviewer, an anesthesiologist, noted that there was no decrease in opioid medication usage and no documentation of improved function following the previous injections. The IRO reviewer also noted that there was no evidence of a formal plan of rehabilitation in addition to the facet joint therapy and that no more than two levels are to be performed at one time.

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 making decisions about the care of individual patients. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, 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 in accordance with 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. 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 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.
- (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.

As noted above, the ODG sets out criteria for radiofrequency injections which the doctors also referred to as radiofrequency injections and/or denervation. Dr. B, an anesthesiologist board certified in pain management, testified that the Claimant does meet the criteria for the recommended injections which he also referred to as "denervation." Dr. B testified that the ODG recommends injecting only two levels but it was his opinion that the ODG criteria was arbitrary and that evidence-based medicine does not support that recommendation. Dr. N, a board certified anesthesiologist, testified that she was the lead author of the ODG pain chapter and that the recommendations were supported by evidence-based medicine. Dr. B testified that he was basing his opinion on his clinical experience and training and he cited the ASIPP (American Society of Interventional Pain Physicians) guidelines which he testified did not limit the number

of levels to be injected to only two. Dr. B also stated he had not reviewed the ASIPP guidelines in two years and Dr. N testified that these guidelines also recommend only two levels. The ASIPP guidelines were not introduced into evidence at this hearing. Dr. B testified that the request for injections at T12-S1 was in error and that the procedure was not necessary at all of the levels. Dr. N gave a thorough explanation as to how the Claimant did not meet the ODG criteria and she concluded by stating that an injection at L2-L3 might be helpful; however, multilevel injections were not medically necessary. Dr. B offered an opinion regarding the necessity for the injections; however, he failed to present evidence-based medicine to support his opinion.

Based on the evidence presented, the Claimant does not meet the criteria set out in the ODG for radiofrequency injections on the right at T12 through S1 and the Claimant failed to provide an evidence-based medicine medical opinion contrary to the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to radiofrequency injections at right T12, L1, L2, L3, L4, L5 and S1 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 (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. Claimant does not meet the requirements of the ODG for radiofrequency injections at right T12, L1, L2, L3, L4, L5 and S1 and he failed to present other evidence-based medicine supporting the necessity for this procedure.
4. Radiofrequency injections at right T12, L1, L2, L3, L4, L5 and S1 are 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 radiofrequency injections at right T12, L1, L2, L3, L4, L5 and S1 are not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to radiofrequency injections at right T12, L1, L2, L3, L4, L5 and S1 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 (**SELF-INSURED**) and the name and address of its registered agent for service of process is:

EH
(SELF-INSURED)
(STREET ADDRESS)
(CITY), TX (ZIP CODE)

Signed this 20th day of December, 2010.

Carol A. Fougerat
Hearing Officer