

MEDICAL CONTESTED CASE HEARING NO 12060  
M6-12-37677-01

**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 January 20, 2012 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 lumbar radiofrequency TC injections at right T12, L1, and L2 for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

Claimant sustained a compensable lumbar spine injury on (Date of Injury) when he slipped and fell. Claimant underwent several surgeries as a result of this injury including a lumbar fusion at L4 through S1. Claimant underwent RFTC injections on the left at T12, L1, L2, L3 and S1 on January 23, 2008 and RFTC injections on the left at T12 and L1-S1 on July 16, 2009. Claimant testified that these injections provided some relief of his low back pain but also helped with being able to urinate and relieved his lower extremity numbness. Claimant testified that he was able to reduce his pain medications after these injections. Claimant testified that his back pain has increased and the medical records indicate he has resumed his pain medications. Claimant's treating doctor, Dr. Donald B, recommended radiofrequency injections on the right at T12, L1 and L2. Carrier denied this request and Claimant sought review by an IRO. The IRO reviewer upheld the Carrier's denial citing the Official Disability Guidelines (ODG) and provided a detailed analysis of the explanation for the denial. The IRO reviewer, identified as a medical doctor board certified in physical medicine and rehabilitation, noted that this is a complicated, multifaceted case with spine injury and multiple radiculopathies leading to urinary dysfunction and chronic pain syndrome. The IRO reviewer acknowledged that the Claimant had a previous RFTC which apparently did provide some relief but that the pain relief and "functional

improvement” documented in the medical record does not rise to the objective levels required by the ODG Treatment Guidelines.

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 (RFTC) 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. Dr. B testified that he performs a physical examination, supported by peer-reviewed medical literature (he was unable to cite the specific study but mentioned it was authored by "Cohen" from the Mayo Clinic and Johns Hopkins) to determine facet pain. Dr. SN, a board certified anesthesiologist, testified that she was the lead author of the ODG pain chapter and that the ODG recommendations were supported by evidence-based medicine. Dr. N testified that orthopedic tests are recommended to determine facet problems; however, medial branch blocks should be performed in addition to physical exams to determine the necessity of RFTC injections. Dr. B agreed that, given the length of time that has passed since the Claimant's last medial branch blocks were performed, that the Claimant may need a single facet block prior to the RFTC injections to determine facet pain.

The ODG also recommends that 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. Dr. B's medical records indicate that the Claimant had 70% relief for two months after the July 16, 2009 RFTC injections. Dr. N testified that, based on her review of the medical records, the prior injections did not show success or facet mediated pain. Dr. N suggested that medial branch blocks be performed prior to the RFTC injections to identify any facet joint pain in addition to the orthopedic examinations that Dr. B performs. Dr. N also testified that the Claimant's medical records indicate that he suffers from sensory and reflex loss which would indicate that the Claimant's pain is not facet mediated pain. Dr. N gave a thorough explanation as to how the Claimant did not meet the ODG criteria and, although Dr. B offered an opinion regarding the necessity for the injections, 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, L1 and L2 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, and L2 for the compensable injury of (Date of Injury).

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)Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. Claimant sustained a compensable injury to his lumbar spine on (Date of Injury).
  - D. The IRO determined that the proposed procedure was not medically necessary for the compensable injury of (Date of Injury).
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, and L2 and he failed to present other evidence-based medicine supporting the necessity for this procedure.
4. Radiofrequency injections at right T12, L1, and L2 is not health care reasonably required for the compensable injury of (Date of Injury).

### **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) Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that radiofrequency injections at right T12, L1, and L2 are not health care reasonably required for the compensable injury of (Date of Injury).

**DECISION**

Claimant is not entitled to radiofrequency injections at right T12, L1, and L2 for the compensable injury of (Date of Injury).

**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:

**(SELF-INSURED)**  
**(ADDRESS)**  
**(CITY), (STATE) (ZIP)**

Signed this 20th day of January, 2012.

Carol A. Fougerat  
Hearing Officer