

MEDICAL CONTESTED CASE HEARING NO. 12096  
**M6-12-36916-01**

**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 March 28, 2012 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 400 units of Botox for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by SL, ombudsman.  
Respondent/Carrier was represented by SS, attorney.

**BACKGROUND INFORMATION**

On (Date of Injury), Claimant sustained a compensable injury when she tripped and fell. Carrier has accepted the diagnoses of post traumatic cervical dystonia. As a result of the compensable injury, Claimant's treating physician has recommended Botox injections. However, the request was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a Board Certified Orthopedic Surgeon, provided a review of the medical records, and noted that Botox injections are recommended for dystonia "provided the patient meets specific criteria to include documented objective efficacy of the previous injections. No documentation was submitted regarding the patient's response from the previous Botox injection. Given the lack of documentation regarding the objective efficacy of the previous injections, this request does not meet guideline recommendations."

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 discusses the use of Botox injections for cervical injuries and states the following:

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)

Claimant relied on her testimony, the testimony of two physicians, and various medical reports in support of her position that the recommended procedure is reasonable and necessary. It is undisputed that Claimant has undergone multiple Botox injections since 1997. Claimant testified that she has received the series of Botox injections approximately every four months since 1997. It should be noted that the type of botulism that the parties were discussing is "Type A." The physician who performs the Botox injections acknowledged that she merely administers the injections, and because the Claimant travels outside of Texas to receive the injections, she does not physically follow-up with the Claimant, and relied on the Claimant's subjective description of the efficacy of the injections. The administering physician testified that there was no objective documentation showing the neck condition prior to the injection and no objective documentation showing the neck condition after the injections were administered. Similarly, the treating physician also acknowledged that there was no objective documentation showing the efficacy of the Botox injections after they were administered as compared to her condition prior to the administration of the Botox injections. Although the physicians testified that the Botox injections are recommended for the spasmodic torticollis, both physicians have acknowledged that they relied on Claimant's reports of success to the injections. Based on the evidence presented, Claimant did not meet her burden to establish by a preponderance of evidence-based medical evidence that the health care at issue was reasonably required for her 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) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On (Date of Injury), Claimant was the employee of the (Self-Insured), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance as a Self-Insurer.
  - D. On (Date of Injury), Claimant sustained a compensable 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. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of (Date of Injury).
4. Claimant failed to present evidence based medical evidence contrary to the IRO decision.
5. The 400 units of Botox 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) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that 400 units of Botox is not health care reasonably required for the compensable injury of (Date of Injury).

## **DECISION**

Claimant is not entitled to 400 units of Botox 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

**SUPERINTENDENT OF SCHOOLS  
(SELF-INSURED)  
(CITY), TEXAS (ZIP CODE)**

Signed this 5<sup>th</sup> day of April, 2012.

Teresa G. Hartley  
Hearing Officer