

MEDICAL CONTESTED CASE HEARING NO. 13081

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 April 2, 2013 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to bilateral facet RFTC at levels L4 through S1 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by SC, ombudsman.

Carrier appeared and was represented by RJ, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-4

Claimant's Exhibits C-1 through C-5

Carrier's Exhibits CR-R1 through CR-R7

BACKGROUND INFORMATION

Claimant worked for an oilfield service company on (Date of Injury). He sustained a compensable shoulder, neck and low back injury while changing the cable on a winch line. He had shoulder surgery in 2009. Following shoulder surgery in early 2009, Claimant began treating with Dr. O for his neck and low back pain. He has had multiple steroid injection and radiofrequency neurotomy treatments by Dr. O.

On November 1, 2012, Dr. O requested precertification to proceed with bilateral lumbar facet injections. The justification provided is that this procedure is medically indicated and medically necessary. In response, the Carrier denied the request for bilateral facet RFTC L4/S1 as not being medically necessary. Throughout the file introduced at the hearing, there is no explanation as to why Dr. O's request did not match up with the Carrier's denial.

Claimant appealed the Carrier's denial to an IRO by completing Form LHL009 listing the denial procedure as bilateral facet RFTC L4/S1. The review doctor for the IRO upheld the Carrier's denial of the bilateral facet RFTC at levels L4 through S1. Claimant timely appealed the IRO decision.

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 Official Disability Guidelines (ODG).

The Official Disability Guidelines (ODG) lists 6 criteria for the use of facet joint radiofrequency neurotomy procedure:

- (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, decreased medications 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.

The IRO review doctor found that the records from Dr. O did not provide a diagnosis of facet joint pain and that the procedure requested is limited to patients with low back pain that is non-radicular. Based on these findings, the IRO review doctor upheld the Carrier's denial of bilateral facet RFTC at levels L4 through S1.

The medical records from Dr. O prior to January 7, 2013, the date of the IRO report, do not clearly set out what medical procedure he was requesting. Dr. O fails to address evidence based medicine for either injection treatment or facet RFTC treatment. His justification is that the procedure he is requesting is "medically indicated and medically necessary" in his opinion. The criteria set out in the ODG or any other evidence based medicine guideline is not addressed. Therefore, I find that the preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to bilateral facet RFTC at levels L4 through S1.

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 (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Liberty Insurance Corporation, Carrier.
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 sustained a compensable injury on (Date of Injury).
4. The IRO decision upheld the Carrier's denial of the request for bilateral facet RFTC at levels L4 through S1 because the criteria set out in the ODG were not addressed.
5. Bilateral facet RFTC at levels L4 through S1 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 the Claimant is not entitled to bilateral facet RFTC at levels L4 through S1 for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to bilateral facet RFTC at levels L4 through S1 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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
211 E. 7TH STREET, SUITE 620
AUSTIN, TX 78701**

Signed this 9th day of April, 2013.

Donald E. Woods
Hearing Officer