MEDICAL CONTESTED CASE HEARING NO. 13109

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 June 26, 2013 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to 6 visits for prolotherapy, low level laser therapy, and plasma rich protein, and self care management therapy if necessary?

PARTIES PRESENT

Petitioner/Claimant was represented by JC, attorney. Claimant did not appear and his attendance was waived. Respondent/Carrier appeared and was represented by SS, attorney.

BACKGROUND INFORMATION

Claimant is a 27-year-old professional hockey player who was injured on (Date of Injury) when he sustained a concussion injury in a game. Claimant has had conservative therapy including medication management. Claimant currently resides in Canada and is being treated by Dr. G, D.C. who has recommended the disputed treatment for diagnoses of severe neck strain/sprain. Carrier has denied the treatment on utilization review and reconsideration, and the denial was upheld by an Independent Review Organization on March 18, 2013 from which denial Claimant has appealed.

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, 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 (s), "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 was the only cited evidence based medicine at the MCCH. It provides as follows with regard to the disputed treatment:

Prolotherapy (also known as sclerotherapy):

> Neck Chapter:
>
> Not recommended. Evidence is in the neck still limited. Only case reports were found supporting the use of prolotherapy for chronic neck pain, but these results were more positive than studies in low back pain. There are conflicting studies concerning the effectiveness of prolotherapy, also known as sclerotherapy, for low back pain. Lasting functional improvement has not been shown. The injections are invasive, may be painful to the patient, and are not generally accepted or widely used. See the Pain Chapter and the Low Back Chapter for more information and references.
>
> Pain Chapter:
>
> Not recommended. Prolotherapy describes a procedure for strengthening lax ligaments by injecting proliferating agents/sclerosing solutions directly into torn or stretched ligaments or tendons or into a joint or adjacent structures to create scar tissue in an effort to stabilize a joint. Agents used with prolotherapy have included zinc sulfate, psyllium seed oil, combinations of dextrose, glycerine and phenol, or dextrose alone. "Proliferatives" act to promote tissue repair or growth by prompting release of growth factors, such as cytokines, or increasing the

effectiveness of existing circulating growth factors. Prolotherapy has been investigated as a treatment of various etiologies of pain, including arthritis, degenerative disc disease, fibromyalgia, tendinitis, and plantar fasciitis. In all studies the effects of prolotherapy did not significantly exceed placebo effects. This recent Cochrane review concluded that, when used alone, prolotherapy is not an effective treatment for chronic low-back pain, but when combined with spinal manipulation, exercise, and other co-interventions, prolotherapy may improve chronic low-back pain and disability, but this statement is confounded by co-interventions and heterogeneity of studies. This systematic review concluded that despite its use for over 50 years, there is no evidence of efficacy for prolotherapy injections alone for chronic low back pain. According to this review, additional larger, randomized controlled trials are needed to make specific recommendations regarding prolotherapy. See the *Low Back Chapter* for more information and references.

Low Level Laser Therapy (LLLT):

Pain Chapter:

Not recommended. There has been interest in using low-level lasers as a conservative alternative to treat pain. Low-level lasers, also known as "cold lasers" and non-thermal lasers, refer to the use of red-beam or near-infrared lasers with a wavelength between 600 and 1000 nm and Watts from 5-500 milliwatts. (In contrast, lasers used in surgery typically use 300 Watts.) When applied to the skin, these lasers produce no sensation and do not burn the skin. Because of the low absorption by human skin, it is hypothesized that the laser light can penetrate deeply into the tissues where it has a photobiostimulative effect. One low-level laser device, the MicroLight 830 Laser, has received clearance for marketing from the U.S. Food and Drug Administration (FDA) specifically for the treatment of carpal tunnel syndrome. Other protocols have used low-level laser energy applied to acupuncture points on the fingers and hand. This technique may be referred to as "laser acupuncture." Given the equivocal or negative outcomes from a significant number of randomized clinical trials, it must be concluded that the body of evidence does not allow conclusions other than that the treatment of most pain syndromes with low level laser therapy provides at best the equivalent of a placebo effect. Low Level Laser Therapy (LLLT) was introduced as an alternative non-invasive treatment for Osteoarthritis (OA) about 20 years ago, but its effectiveness is still controversial. For OA, the results are conflicting in different studies and may depend on the method of application and other features of the LLLT application. Despite some positive findings, data is lacking on how LLLT effectiveness is affected by four important factors: wavelength, treatment duration of LLLT, dosage and site of application over nerves instead of joints.

There is clearly a need to investigate the effects of these factors on LLLT effectiveness for OA in randomized controlled clinical trials. This meta-analysis concluded that there are insufficient data to draw firm conclusions about the effects of LLLT for low-back pain compared to other treatments, different lengths of treatment, different wavelengths and different dosages.

Neck Chapter:

Under study, with conflicting results. Evidence from Cochrane indicates laser therapy to be ineffective (in line with placebo effect) for patients with mechanical neck disorders. See the Pain Chapter for more information. This review concluded that the evidence suggests that low-level laser therapy is more effective than no treatment or sham interventions, but not superior to any recommended treatments. According to the results of a recent meta-analysis, low-level laser therapy (LLLT) may be helpful for chronic neck pain. In acute neck pain the relative risk (RR) for pain relief with LLLT vs placebo was 1.69. For chronic neck pain, the RR for pain relief with LLLT was 4.05. Limitations of this review include lack of accepted terminology for laser therapy and heterogeneity of conditions underlying neck pain and LLLT treatment protocols. Whatever the mechanism of action, clinical benefits of LLLT occurred both when LLLT is used as monotherapy and in the context of a regular exercise and stretching program. In clinical settings, combination with an exercise program is probably preferable. LLLT is a non-invasive treatment that can provide pain relief in the short and medium term for people with neck pain, and this evidence may be more solid than that for many current interventions. Although mechanisms of action and effects on function and occupational outcomes are not clearly understood and warrant further impartial study, LLLT is an option worthy of consideration for management of non-specific neck pain.

Platelet Rich Plasma (PRP):

Not recommended except in a research setting. PRP therapies are more complicated than previously acknowledged, and an understanding of the fundamental processes and pivotal molecules involved will need to be elucidated. PRP therapies in clinical trials await assessment. Platelet-rich plasma (PRP) therapy is a recently developed technique that uses a concentrated portion of autologous blood to try to improve and accelerate the healing of various tissues. There is considerable interest in using PRP for the treatment of musculoskeletal disorders, particularly athletic injuries. Because PRP products are safe and easy to prepare and administer, there has been increased attention toward using PRP in numerous clinical settings. Platelet-rich plasma has been used to treat conditions such as lateral epicondylitis, ligament and muscle strains, and tears of the rotator cuff, anterior cruciate ligament, Achilles tendon, plastic surgery and other

conditions. Platelet-rich plasma can be applied at the site of injury either during surgery or through an injection performed in the physician's office. However, there is little published clinical evidence that proves its efficacy in treating the multitude of injuries/disorders that are thought to benefit from PRP. See also specific body-part chapters below:

Ankle: Not recommended, with recent higher quality evidence showing this treatment to be no better than placebo.

Elbow: Under study.

Hip: Under study.

Knee: Under study.

Low back: Not recommended.

Shoulder: Not recommended

The evidence based medical evidence does not show that the requested procedures are recommended in Claimant's situation. While the ODG was not shown to address self care management training, the utilization reviewer stated in denying that request that once the patient is able to perform activities of daily living, further skilled training is not considered medically necessary. In this case, Dr. G did not testify and his reports do not document evidence based medical justification for such further skilled training. The preponderance of the evidence based medical evidence is not contrary to the determination of the IRO.

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 through Ace American Insurance Company, Carrier.

   D. Claimant sustained a compensable injury on (Date of Injury).

   E. The Independent Review Organization determined that claimant is not entitled to 6 visits for prolotherapy, low level laser therapy, and plasma rich protein, and self care management therapy if necessary.

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 preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to 6 visits for prolotherapy, low level laser therapy, plasma rich protein and self care management therapy if necessary.

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. Claimant is not entitled to 6 visits for prolotherapy, low level laser therapy, plasma rich protein and self care management therapy if necessary for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to 6 visits for prolotherapy, low level laser therapy, plasma rich protein and self care management therapy if necessary 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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

C T CORPORATION SYSTEM
350 NORTH ST PAUL STREET
DALLAS, TEXAS 75201

Signed this 2nd day of July, 2013

Warren E. Hancock, Jr.
Hearing Officer