

MEDICAL CONTESTED CASE HEARING NO. 14020

**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 September 26, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to Botox injections to the bilateral L4-L5 paravertebral muscles including CPT Code 64614 for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant did not appear. Respondent/Carrier appeared and was represented by RJ, attorney.

**BACKGROUND INFORMATION**

As reflected in the IRO decision in this matter, Claimant sustained a compensable injury on (Date of Injury). An MRI of the lumbar spine on November 2, 2012, revealed a mild disc bulge at L3-L4 with some impingement on the L4 nerve root. Claimant has post-laminectomy changes at L4-L5 and a 4 mm disc protrusion at that level. She also has a 3 mm disc protrusion at L5-S1. Preauthorization for Botox injections for muscle spasm was requested and denied by Carrier. Claimant appealed Carrier's denial of the injections through the IRO process. The IRO physician reviewer concurred with Carrier's Utilization Review Agents that the Botox injections was not health care reasonably required for the compensable injury of (Date of Injury). The IRO physician reviewer noted that Botox injections are not recommended in the Official Disability Guidelines (ODG). Claimant appealed the IRO decision and has the burden to prove, by a preponderance of evidence based medical evidence, that the IRO decision is incorrect.

Although properly notified, Claimant failed to appear for the contested case hearing scheduled for 10:30 a.m. on September 26, 2013. A letter advising that the hearing had convened and that the record would be held open for ten days to afford Claimant the opportunity to respond and request that the hearing be rescheduled to permit her to present evidence on the disputed issues was mailed to Claimant on September 26, 2013, to her last known address as reflected in Division records, (Address). The 10-day letter was returned with an indication that Claimant had moved to (Address). The 10-day letter was then sent to the new address. That letter was also

returned to the Division. Another forwarding address in (City), Texas was provided to the Division. On October 7, 2013, the 10-day letter was sent to the (City) address. On October 9, 2013, Claimant contacted the Division and advised the Division that she had moved and wanted to change treating doctors. The address provided by Claimant for the change of treating doctors was the (City) address. Claimant did not request that the hearing in this matter be reset when she contacted the Division. On October 24, 2013, the record was closed. Having failed to appear and offer evidence in support of her claim, Claimant failed to present any evidence that tends to show that the IRO decision is contrary to the preponderance of the evidence based medical evidence. She is not entitled to the relief she seeks.

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. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
2. On (Date of Injury), Claimant was the employee of (Employer), Employer.
3. On (Date of Injury), Employer provided workers' compensation insurance through Liberty Insurance Corporation, Carrier.
4. The Division sent a single document stating the true corporate name of the Carrier and the name and street address of Carrier's registered agent for service with the 10-day letter to the Claimant at Claimant's address of record as of September 26, 2013, and subsequent addresses including Claimant's current address of record. That document was admitted into evidence as Hearing Officer Exhibit Number 2.
5. Claimant failed to appear for the September 26, 2013, contested case hearing and did not respond to the Division's letter offering her the opportunity to have the hearing rescheduled.
6. Claimant failed to adduce evidence contrary to the IRO determination that Botox injections are not reasonably required health care for the compensable injury of (Date of Injury).
7. Claimant did not have good cause for failing to appear at the contested case hearing.

### **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. Botox injections to the bilateral L4-L5 paravertebral muscles including CPT Code 64614 is not reasonably required health care for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to Botox injections to the bilateral L4-L5 paravertebral muscles including CPT Code 64614 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 Section 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 SERVICE CO.  
211 EAST 7TH STREET, STE. 620  
AUSTIN, TX 78701-3218**

Signed this 24<sup>th</sup> day of October, 2013.

KENNETH A. HUCHTON  
Hearing Officer