MEDICAL CONTESTED CASE HEARING NO.14039

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 23, 2014 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to left L2-S1 facet medial nerve block for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by CN, ombudsman.

Respondent/Carrier appeared and was represented by RR, attorney.

BACKGROUND INFORMATION

Claimant relied on the writing of BS, M.D.and her testimony to show that the preponderance of the evidence was contrary to the IRO's decision that Claimant was not entitled to left L2-S1 facet medial nerve block for the compensable injury of (Date of Injury).

Claimant, a registered nurse, was injured during the course and scope of employment. She was next to a patient who began to fall. The patient used her hands to pull Claimant's neck and shoulders forward and down so that the patient's upper body landed on top of the back part of Claimant's neck, shoulders, and upper back. Claimant felt immediate pain to the back and tingling in her arm. Claimant sought medical treatment from the emergency room, employee health, and from Dr. C.

Claimant had surgery (laminectomy, decompression, and fusion at T11-L1) in April of 2012. After surgery, she continued to have pain and was referred to pain management.

Dr. S told Claimant that she needs to undergo facet medial nerve blocks that will determine the source of pain, stating that hardware is intertwined with nerves in her back.

Claimant testified that she wants the blocks, stating that she believes the blocks will give doctors more information about her pain. She said she wants the pain to stop so that she will be in good shape to take care of herself and her children.

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 parties agree that the following ODG section on facet joint diagnostic blocks (injections) was used by the IRO in reference to the denial of Claimant’s request:

> Recommend no more than one set of medial branch diagnostic blocks prior to neurotomy, if neurotomy is chosen as an option for treatment (a procedure that is still considered “under study”). Diagnostic blocks may be performed with the anticipation that if successful, treatment may proceed to facet neurotomy at the diagnosed levels. Current research indicates that a minimum of one diagnostic block be performed prior to a neurotomy, and that this be a medial branch block (MBB). Although it is suggested that MBBs and intra-articular blocks appear to provide comparable diagnostic information, the results of placebo-controlled trials

of neurotomy found better predictive effect with diagnostic MBBs. In addition, the same nerves are tested with the MBB as are treated with the neurotomy. The use of a confirmatory block has been strongly suggested due to the high rate of false positives with single blocks (range of 25% to 40%) but this does not appear to be cost effective or to prevent the incidence of false positive response to the neurotomy procedure itself (Cohen, 2007) (Bogduk, 2000) (Cohen2, 2007) (Mancchukonda, 2007) (Dreyfuss, 2000) (Manchikanti2, 2003) (Datta, 2009) Etiology of false positive blocks: Placebo response (18-32%), use of sedation, liberal use of local anesthetic, and spread of injectate to other pain generators. The concomitant use of sedative during the block can also interfere with an accurate diagnosis. (Cohen, 2007)

MBB procedure: The technique for medial branch blocks in the lumbar region requires a block of 2 medial branch nerves (MBN). The recommendation is the following: (1) L1-L2 (T12 and L1 MBN); (2) L2-L3(L1 and L2 MBN); (3) L3-L4 (L2 and L3 MBN); (4) L4-L5 (L3 and L4 MBN); (5) L5-S1; the L4 and L5 MBN are blocked, and it is recommended that S1 nerve be blocked at the superior articular process. Blocking two joints such as L3-4 and L4-5 will require blocks of three nerves (L2, L3 and L4). Blocking L4-5 and L5-S1 will require blocks of L3, L4, L5 with the option of blocking S1. (Clemans, 2005) The volume of injectate for diagnostic medial branch blocks must be kept to a minimum (a trace amount of contrast with not more than 0.5 cc of injectate), as increased volume may anesthetize other potential areas of pain generation and confound the ability of the block to accurately diagnose facet pathology. Specifically, the concern is that the lateral and intermediate branches will be blocked; nerves that innervate the paraspinal muscles and fascia, ligaments, sacroiliac joints and skin. (Cohen, 2007) Intraarticular blocks also have limitations due to the fact that they can be technically challenging, and if the joint capsule ruptures, injectate may diffuse to the epidural space, intervertebral foramen, ligamentum flavum and paraspinal musculature. (Cohen, 2007) (Washington, 2005) (Manchikanti, 2003) (Dreyfuss, 2003) (BlueCross BlueShield, 2004) (Pneumaticos, 2006) (Boswell, 2007) (Boswell2, 2007) A recent meta-analysis concluded that there is insufficient evidence to evaluate validity or utility of diagnostic selective nerve root block intra-articular facet joint block, medial branch block, or sacroiliac joint block as diagnostic procedures for low back pain with or without radiculopathy. (Chou2, 2009) This study suggests that proceeding to radiofrequency denervation without a diagnostic block is the most cost-effective treatment paradigm, but does not result in the best pain outcomes. (Cohen, 2010) See also Facet joint pain, signs & symptoms: Facet joint radiofrequency neurotomy; Facet joint medial branch blocks (therapeutic injections); & Facet joint intra-articular injections (therapeutic blocks). Also see Neck Chapter and Pain Chapter.

Criteria for the use of diagnostic blocks for facet “mediated” pain:

Clinical presentation should be consistent with facet joint pain, signs & symptoms.

(1) One set of diagnostic medial branch blocks is required with a response of > 70%. The pain response should last at least 2 hours for Lidocaine.
(2) Limited to patients with low-back pain that is non-radicular and at no more than two levels bilaterally.
(3) There is documentation of failure of conservative treatment (including home exercise, PT and NSAIDS) prior to the procedure of at least 4-6 weeks.
(4) No more than 2 facet joint levels are injected in one session (see above for medial branch block levels).
(5) Recommended volume of no more than 0.5 cc of injectate is given to each joint.
(6) No pain medication from home should be taken for at least 4 hours prior to the diagnostic block and for 4 to 6 hours afterward.
(7) Opioids should not be given as a “sedative” during the procedure.
(8) The use of IV sedation (including other agents such as midazolam) may be grounds to negate the results of a diagnostic block, and should only be given in cases of extreme anxiety.
(9) The patient should document pain relief with an instrument such as a VAS scale, emphasizing the importance of recording the maximum pain relief and maximum duration of pain. The patient should also keep medication use and activity logs to support subjective reports of better pain control.
(10) Diagnostic facet blocks should not be performed in patients in whom a surgical procedure is anticipated. (Resnick, 2005)
(11) Diagnostic facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level (exclusion Criteria that would require UR physician review: Previous fusion at the targeted level. (Franklin, 2008)

The reviewer for the IRO agreed that Claimant’s request should be denied. According to the IRO, the reviewer is board certified in pain management. The reviewer wrote on September 4, 2013 that the request did not follow the ODG criteria of having no more than 2 facet joint levels injected at one session.

Claimant presented documentary evidence from Dr. S who wrote two letters stating that Claimant needed lumbar facet median nerve blocks to determine if her pain was coming from facets. Even though the doctor wrote that he understood the ODG did not recommend multi-level

facet blocks, he still recommended three levels in January of 2014 and four levels in August of 2013. He did not give any reasons that showed why the ODG should not be applied to Claimant's condition.

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, who was the employee of (Employer), sustained a compensable injury.

   C. On (Date of Injury), Employer provided workers' compensation insurance with Zurich American Insurance Company.

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. Left L2-S1 facet medial nerve block is not health care reasonably required for the compensable injury of (Date of Injury).

4. Claimant did not present evidence based medical evidence to show why she should not follow the ODG criteria of having no more than 2 facet joint levels injected in one session.

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 left L2-S1 facet medial nerve block is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to left L2-S1 facet medial nerve block 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 **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3232

Signed this 24th day of January, 2014

Carolyn F. Moore
Hearing Officer