

MEDICAL CONTESTED CASE HEARING NO. 15028

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a bilateral C1-C2 Intra-articular (IA) injection for the compensable injury of (Date of Injury)

STATEMENT OF THE CASE

A contested case hearing was held on March 2, 2015, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to a bilateral C1-C2 Intra-articular (IA) injection for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner, hereinafter referred to as Claimant, appeared and was assisted by CM, ombudsman. Respondent, hereinafter referred to as Carrier, appeared and was represented by JC, attorney.

DISCUSSION

Claimant sustained a compensable injury in a slip and fall at work on (Date of Injury). He selected FK, DO as his treating doctor. Dr. K referred Claimant to RP, MD and Claimant initially saw Dr. P in January of 2014. Dr. P recommended bilateral medial branch blocks. He administered the branch blocks at C2 through C4 on February 25, 2014, and performed radiofrequency ablation of the medial branches at those levels on April 29, 2014. Claimant testified that the medial branch blocks and radiofrequency ablation from C2 through C4 did not afford any relief. On May 22, 2014, Dr. P wrote that he would have Claimant try a medrol dose pack and, if that did not help, he would consider a C1-C2 intra-articular steroid injection. He administered the bilateral C1-C2 intra-articular injection on July 28, 2014. On August 7, 2014, Claimant told Dr. P that he had 60-70% relief from the injection at C1-C2 and that his headaches were much better. On August 20, 2014, Dr. K documented that Claimant reported that the injection had "given approximately 20% relief of [his] headaches." Claimant testified that he meant that he had received an overall 20% improvement and that his headaches were much better after the C1-C2 injection.

On October 24, 2014, Claimant returned to Dr. P complaining of increased neck pain and headaches. Dr. P wrote in the chart that he "suspect[ed] that it [was] just time to repeat the [C1-C2 intra-articular steroid injection]." Dr. P requested preauthorization for the repeat intra-articular steroid injection.

On October 30, 2014, Carrier's utilization review agent, NK, MD, an anesthesiologist, recommended that the requested injection be denied. Reconsideration of the request was submitted and a second anesthesiologist, Lisa Gill, DO, also recommended that Carrier deny the request. Claimant then appealed Carrier's denial of preauthorization through the Independent Review process. The Texas Department of Insurance appointed Maximus Federal Services Inc. as the independent review organization (IRO) to review Carrier's denial of preauthorization. On November 24, 2014, the IRO issued its decision upholding Carrier's denial of preauthorization of the bilateral intra-articular steroid injection at C1-C2. Claimant then submitted a request for a contested case hearing to challenge the IRO's decision. The contested case hearing was held on March 2, 2015.

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 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 for the treatment of a particular patient. 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. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered a party to an appeal. In a contested case hearing, 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. (Division Rule 133.308 (s).)

With regard to intra-articular steroid injections, the Neck and Upper Back chapter of the ODG provides:

Facet joint therapeutic steroid injections

Not recommended.

Intra-articular blocks: No reports from quality studies regarding the effect of intra-articular steroid injections are currently known. There are also no comparative studies between intra-articular blocks and rhizotomy. (Falco, 2009) (van Eerd, 2010) There is one randomized controlled study evaluating the use of therapeutic intra-articular corticosteroid injections. The results showed that there was no significant difference between groups of patients (with a diagnosis of facet pain secondary to whiplash) that received corticosteroid vs. local anesthetic intra-articular blocks (median time to return of pain to 50%, 3 days and 3.5 days, respectively). (Barnsley, 1994)

Medial branch blocks: This procedure is generally considered a diagnostic block. There is one randomized controlled trial (RCT) comparing the effect of medial branch blocks with bupivacaine alone to blocks with the same local anesthetic plus steroid (60 patients in each group). No placebo arm was provided. Patients with radicular symptoms were excluded. Patients with uncontrolled major depression or psychiatric disorders and those with heavy opioid use were also excluded. Pain reduction per each individual block in both groups ranged from 14 to 16 weeks. It was opined that there was no role for steroid in the blocks, and the mechanism for the effect of local anesthetic only could only be speculated on. It was also noted that blocks were required 3 to 4 times a year for continued pain relief. (Manchikanti, 2008)

Complications: Low rates of infection, dural puncture, spinal cord trauma, spinal anesthesia, chemical meningitis, neural trauma, pneumothorax, radiation exposure, facet capsule rupture, hematoma formation and side effects of steroids. Fluoroscopy is recommended to avoid arterial, intrathecal, or spinal injection. (van Eerd, 2010) (Nelemans-Cochrane, 2000) (Manchikanti, 2004) (Manchikanti, 2003) (Boswell, 2007) (Falco, 2009) (Manchikanti, 2008) (Manchikanti, 2009) (Carragee, 2009)

While not recommended, criteria for use of therapeutic intra-articular and medial branch blocks, if used anyway:

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

1. There should be no evidence of radicular pain, spinal stenosis, or previous fusion.
2. If successful (initial pain relief of 70%, plus pain relief of at least 50% for a duration of at least 6 weeks), the recommendation is to proceed to a medial branch diagnostic block and subsequent neurotomy (if the medial branch block is positive).
3. When performing therapeutic blocks, no more than 2 levels may be blocked at any one time.
4. If prolonged evidence of effectiveness is obtained after at least one therapeutic block, there should be consideration of performing a radiofrequency neurotomy.
5. There should be evidence of a formal plan of rehabilitation in addition to facet joint injection therapy.
6. No more than one therapeutic intra-articular block is recommended.

In addressing whether Carrier should deny preauthorization of the requested intra-articular steroid injections at C1-C2, the utilization review agents and the IRO physician reviewer referenced the criteria for the injections if used despite the ODG's clear statement that the injections are not recommended. Since the determination of whether a procedure is reasonably necessary health care under the Act is initially determined by the recommendations in the ODG, intra-articular steroid injections are not deemed to be reasonably necessary health care. Additionally, even if injections were used despite the ODG's recommendation against them, the criteria in the ODG for the use of the injections specifically states that "no more than one therapeutic intra-articular block is recommended." Dr. P's statement that "it is just time to repeat the [C1-C2 intra-articular steroid injection]" has no support in the ODG and no evidence-based medical evidence was submitted by Claimant to support Dr. P's recommendation.

The preponderance of the evidence is consistent with the IRO physician reviewer's determination that Carrier's denial of the repeat intra-articular steroid injection at C1-C2 should be upheld.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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 Old Republic Insurance Company, Carrier.
 - D. Claimant sustained a compensable cervical sprain, thoracic sprain and lumbar sprain on (Date of Injury)
 - E. Maximus Federal Services, Inc. was appointed as the IRO to review Carrier's denial of the requested bilateral C1-C2 intra-articular injections.
 - F. The IRO upheld Carrier's denial of the requested intra-articular injections.
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. Intra-articular injections are not recommended in the ODG.
 4. The preponderance of the evidence-based medical evidence is not contrary to the IRO's determination that Carrier's denial of the requested bilateral C1-C2 Intra-articular (IA) injection should be upheld.
 5. A bilateral C1-C2 Intra-articular (IA) injection 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 Claimant is not entitled to a bilateral C1-C2 Intra-articular (IA) injection for the compensable injury of (Date of Injury)

DECISION

Claimant is not entitled to a bilateral C1-C2 Intra-articular (IA) injection 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 **OLD REPUBLIC INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7th STREET, #620
AUSTIN, TEXAS 78701-3218**

Signed this 3rd day of March, 2015.

KENNETH A. HUCHTON
Hearing Officer