MEDICAL CONTESTED CASE HEARING NO. 15047

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 Ambien 10 mg and right SI (sacroiliac) joint injection for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on June 23, 2015, 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 Ambien 10 mg and right SI (sacroiliac) joint injection for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by PA, ombudsman. Respondent/Carrier appeared and was represented by PB, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: JN

For Carrier: None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-6.

Claimant's Exhibits C-1 through C-5.

Carrier's Exhibits CR-A through CR-M.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury). The parties stipulated that the compensable injury was to Claimant's neck, low back, left knee and right shoulder. Claimant has been receiving prescriptions for Ambien to address sleeping problems from his pain

management doctor, AC, MD, for a number of years. Dr. C also requested approval for a right SI joint injection. An initial Carrier utilization review agent reviewed the request for approval for the Ambien and the SI injection and denied both requests. Claimant requested reconsideration of the denial and, upon review by a second Carrier utilization review agent, the requests were again denied. Claimant then requested an independent review organization (IRO) review of Carrier's denial of approval. The Texas Department of Insurance appointed Medical Assessments, Inc. as the IRO. After a review of the requests, the IRO upheld Carrier's denial of the prescription and injection. Claimant has appealed the IRO's findings to the Division.

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, in accordance with the 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 making decisions about the care of individual patients. 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 (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. (Division Rule 133.308 (s).)

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is

relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See Black vs. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of the general acceptance of the theory and technique by the relevant scientific community; the expert's qualifications; the existence of literature supporting or rejecting the theory; the technique's potential rate of error; the availability of other experts to test and evaluate the technique; and the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. *Black v. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999).

In her review of Claimant's request for the Ambien prescription and SI steroid joint injection, RA, MD, a member of the American Board of Preventative Medicine and certified in Occupational Medicine, determined that the requested care is not recommended by the ODG. In particular, she noted that the Pain (chronic) Chapter of the ODG states that Ambien (the brand-name for Zolpidem) is a short-acting non-benzodiazepine hypnotic which is approved for short-term (usually four to six weeks) treatment of insomnia. Dr. C's records indicates that he prescribed the Ambien for the treatment of insomnia related to Claimant's chronic pain complaints. The ODG further states that while drugs such as Ambien are commonly prescribed for chronic pain, "pain specialists rarely, if ever, recommend them for long-term use" because they "can be habit-forming, and they may impair function and memory more than opioid pain relievers" and "may increase pain and depression over the long-term." Dr. A noted that although SI joint injections, covered in the ODG hip and pelvis chapter, may be recommended if aggressive conservative therapy has failed," it also provides that "if steroids are injected during the initial injection, the duration of pain relief should be at least 6 weeks with at least > 70% pain relief recorded for this period." In a chart note dated February 8, 2000, Dr. C recorded that Claimant asked when a "lumbar epidural steroid injection that we did on 12/27/99" could be repeated. Dr. C wrote that the epidural steroid injection gave Claimant "essentially complete and total pain relief for several days to a week after the procedure" and that he advised Claimant that "in spite of the fact that it gives him excellent relief, it is transient and it would be best to separate the injections by several months." Dr. A also determined that there were no physical examination findings that provide adequate support for a diagnosis for SI joint dysfunction and that there was no documentation of SI joint challenge testing in Dr. C's note of October 15, 2014, the then-most recent detailed physical examination findings.

Dr. A's recommendation for non-certification was appealed and the second utilization review agent, GB, DO, a member of the American Board of Anesthesiology, the American Board of Pain Medicine, and the American Academy of Pain Management, reconsidered Carrier's denial. Dr. B reviewed the ODG recommendations on the use of Ambien, noting that evidence-based medicine supports its use for only short periods, and also noted that the documentation in

Claimant's case did not support signs or symptoms of sacroiliac dysfunction and there was no showing that Claimant had tried and failed recent conservative care. He agreed with Dr. A's determination that Carrier should not approve the requested prescription for Ambien and requested SI joint injection.

The IRO assigned the case to a physician who is Board Certified in Anesthesiology with over six years of experience, including pain management. The physician reviewer reviewed the medical evidence provided by the parties and, based upon the ODG and the physician reviewer's medical judgment, the physician reviewer upheld the Carrier's denial. The physician reviewer wrote that, in order to justify a multidisciplinary approach as suggested, there should be a demonstration of pain that is excessive compared to the diagnosis and an indication that the patient is not a candidate for surgical intervention. He opined that neither factor had been established and that the request for Ambien 10 mg and right SI joint injection should be non-certified.

As noted above, the appellant from an IRO decision has the burden to show, by the preponderance of the evidence-based medical evidence, that the IRO decision is incorrect. Claimant offered a number of medical records that substantiate his sleeping problems and Dr. C's ongoing prescriptions of Ambien to treat his insomnia. Claimant contends that the Ambien is designed to treat sleep apnea; Dr. C's records indicate that it is primarily intended to treat insomnia due to chronic pain. In a letter dated May 14, 2015, Dr. C wrote that Claimant had a serious injury and extensive cervical spine surgery with complications and sequelae; that one of Claimant's problems is "a sleep disturbance that has been difficult to control" and that Claimant does very well with Zolpidem "and has done so for quite some time without any side effects or ill effects." He wrote that he has tried other medications for sleep in the past that have not been effective and that it is his opinion that "in spite of the typical use of Zolpidem for short-term use that in this patient long-term use is safe and effective."

The ODG recognizes that there is care that may be covered in the ODG, but not recommended, that is health care reasonably required for some patients. Subchapter D of the ODG states that, for treatment not recommended by the ODG, the health care provider can substantiate the necessity for that course of care. It provides as follows:

> B. Treatments that are covered but not recommended
>
> When a treatment and condition are already covered in ODG, but specifically not recommended in ODG (or ODG has a patient selection criteria that would not include the case under consideration), the health care provider requesting the treatment should provide documentation specific to his or her case to support the use of the treatment outside of the guidelines. This is because the highest quality scientific evidence for this situation should already be in the guidelines, so it would not be likely to find evidence that could trump the evidence already in the guidelines. Patients with co-morbidities and/or documented functional

improvement warrant additional consideration and the health care provider should adequately document these factors if present.

(1) Patient co-morbidities

In documenting why their patient may be an exception to the guidelines, providers will want to explain how their patient is different from the ones used in the studies that may have resulted in a negative recommendation or exclusion. Co-morbidities may also require additional treatments beyond ODG recommendations. This will typically involve co-morbidities, for example, obesity, or diabetes that may increase the likelihood that this treatment would be appropriate for their patient. This may also include vocational, recreational and/or other functional factors. There could be specifics of the injury or condition that put the injured worker outside of the type of patients covered in the high quality studies.

(2) Documenting functional improvement

A significant goal of any medical treatment in the workers' compensation system is to return the patient to his prior level of function to allow injured workers to go back to the life they had prior to injury, including return to work. The provider should demonstrate how this functional improvement would be the expected result of the treatment in this case, either from past experience or from an explanation about the mechanism of injury and the effect of the treatment, and documenting points where this improvement can be measured.

Dr. C did not provide any documentation specific to Claimant's case other than a statement that Claimant had been receiving Ambien for a considerable length of time and Dr. C considered it safe and effective. Dr. C's letter of May 14, 2015, did not address the need or efficacy of the requested SI joint injection.

After considering the evidence presented, the Hearing Officer finds that the treatment requested is not recommended by the ODG, that the preponderance of the evidence-based medical evidence is not contrary to the IRO decision, and that Claimant has failed to support the use of the treatment outside of the ODG recommendations.

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 as follows:

   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 Connecticut Indemnity Company, Carrier.

   D. Connecticut Indemnity Company merged with Arrowood Indemnity Company. The current carrier name is Connecticut Indemnity c/o Arrowood Indemnity.

   E. On (Date of Injury), Claimant sustained compensable injuries to the neck, low back, left knee, and right shoulder.

   F. IRO Medical Assessments, Inc. upheld Carrier's earlier denial of Ambien 10 mg and a right SI joint injection.

   G. The Texas Department of Insurance appointed Medical Assessments, Inc. as the independent review organization in this matter.

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 requested prescription for Ambien 10 mg and requested right SI joint injection are not recommended under the ODG.

4. The preponderance of the evidence-based medical evidence does not support the use of the prescription for Ambien 10 mg and requested right SI joint injection outside of the ODG recommendations.

5. Ambien 10 mg and right SI joint injection are 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 Ambien 10 mg and right SI joint injection are not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to Ambien 10 mg and right SI (sacroiliac) joint 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 Section 408.021.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY C/O ARROWOOD INDEMNITY** 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 29th day of June, 2015.

KENNETH A. HUCHTON
Hearing Officer