

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
PACIFIC EMPLOYERS INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

___ (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through the Texas Medical Foundation, an Independent Review Organization (IRO), denying the preauthorization request of Petitioner for trigger point injections. The Commission determined that the trigger point injections were not medically necessary within the meaning of Sections 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 401 *et. seq.* (the Act).

This decision denies the relief sought by Petitioner because the requested trigger point injections are not reasonable or medically necessary to treat his neck pain, muscle spasms or occipital headaches.

By notice dated May 1, 2003, this case was set for a hearing on the merits at 11:00 a.m. on May 29, 2003. On May 22, 2003, the hearing on the merits was reset to 9:00 a.m. on July 10, 2003, at the request of Pacific Employers Insurance Company (Respondent).

On July 10, 2003, Administrative Law Judge (ALJ) Howard S. Seitzman convened the hearing on the merits. Neither Petitioner nor any person purporting to represent Petitioner appeared in person. Respondent appeared and was represented by Laurie S. Gallagher. Respondent's corporate representative Linda Alsbrook appeared by telephone.

Based upon Petitioner's failure to appear, Respondent orally moved to dismiss the docket pursuant to 1 TAC § 155.57 (b)(1)(A). By Order dated July 18, 2003, ALJ Seitzman issued a Conditional Order of Dismissal for Want of Prosecution. By fax dated and received August 4, 2003, Petitioner moved to set aside the dismissal and reopen the record. The basis for the request was that Petitioner misunderstood that he had to appear at the hearing either by telephone or in person. He believed all he had to do was submit the documents pertaining to his claim. By Order dated August 27, 2003, the ALJ set aside the Order of Dismissal for Want of Prosecution, reopened the record, and entered a Case Management and Scheduling Order.

A hearing on the merits convened on November 3, 2003, before ALJ Seitzman. Petitioner appeared *pro se* by telephone and Laurie S. Gallagher was present representing Respondent. There were no contested issues of notice or jurisdiction. Because Petitioner did not have certain exhibits, the record remained open to give Petitioner an opportunity to review the documents and determine if he wished to reopen cross-examination of Respondent's witnesses. The hearing on the merits

reconvened on November 19, 2003. By Order dated December 2, 2003, the ALJ noticed a post-hearing telephone conference to consider reopening the evidentiary record for the results of a March 3, 2003 medical evaluation scheduled with Glenn Andersen, M.D. The telephone conference convened on December 10, 2003, and the parties stated that no report existed as Dr. Andersen did not perform the requested medical evaluation. The record closed on December 10, 2003.

Petitioner sustained a work-related injury on or about ____, when the company vehicle he was driving was struck from behind. Petitioner sustained whip-lash-type injuries to his neck. An October 30, 1992 electromyographic study indicated a C7 radiculopathy. March 4, 1993 diagnostic tests found no evidence of cervical radiculopathy on either side or peripheral neuropathy in either upper extremity. Petitioner has been treated with epidural steroid injections (ESIs or trigger point injections) and with bilateral occipital nerve blocks. Petitioner continues to experience occipital headaches and neck pain.

Multiple practitioners treated Petitioner. Petitioner began treatments with Stephen C. Skinner, D.C., of the Apple Chiropractic Clinic of Slide Road beginning August 22, 1992. Petitioner made a visit to the St. Mary of the Plains' emergency room on September 18, 1992, for neck and head pain. Robert R. Smeyne, D.O., examined Petitioner on October 13, 1992, and concluded Petitioner had a paraspinal strain and myositis.¹ S.R. Reddy, M.D., concluded that an October 30, 1992 neurodiagnostic test indicated a "conduction defect in the large fiber sensory system above the lower medulla and below the thalamus."

J. Nathan Wilson, M.D., examined Petitioner on January 8, 1993, diagnosed a cervical strain with bilateral C7 radiculopathy, right C6, left C8, and recommended an ESI. A January 11, 1993 MRI of the cervical spine interpreted by Jin Leo, M.D., was normal. On January 27, 1993, Selma P. Wilson, M.D., administered a cervical ESI and bilateral occipital nerve blocks for degenerative disk disease and cervical radiculitis.²

Dr. Nathan Wilson examined Petitioner on February 5, 1993, and recommended a psychological examination. William E. Hoke, Ph.D., examined Petitioner on February 23, 1993. His report discussed Petitioner's psychological issues and he noted that Petitioner was a volunteer intermediate emergency medical technician.

On March 4, 1993, Cheryl F. Weber, M.D., interpreted Petitioner's electrodiagnostic studies. Dr. Weber concluded there was no electrodiagnostic evidence of cervical radiculopathy on either side or of peripheral neuropathy in either upper extremity. Dr. Weber diagnosed Petitioner as having a rare hereditary instability of muscle cell membrane.³ Dr. Nathan Wilson's March 8, 1993 progress notes recognized Petitioner's "interesting reports" from Drs. Hoke and Weber. Dr. N. Wilson remarked on Petitioner's elevated hysteria and schizophrenic scales, his underlying anger and hostility and his very pessimistic outlook. He concluded Petitioner has "a myocitis type picture partly due to his injury and partly due to his underlying neurological disorder." Dr. Nathan Wilson's April 7, 1993 report stated that normal X-rays and a normal MRI gave no objective findings for a disability rating.

¹ Myositis is the inflammation of muscle tissue.

² Cervical radiculitis is the inflammation of the nerve(s) that come out of the cervical spine at the neck level.

³ Petitioner's hereditary condition results in tight muscles which can result in pain and spasm. While the condition can be detected by diagnostic testing, it is not necessarily apparent by physical examination.

Dr. Nathan Wilson reported that Petitioner received pain relief from the trigger point injections. On May, 3, 1993, Dr. Selma Wilson remarked that Petitioner's trigger point injections and occipital nerve blocks appear to be effective for approximately ten days. Dr. Selma Wilson commented on June 14, 1993, that the trigger point injections and nerve blocks gave Petitioner significant relief for approximately two weeks.

Richard W. Blide, M.D. performed an impairment rating on July 7, 1993, and concluded that Petitioner's symptoms appeared most consistent with cervical strain and that there was no radiculopathy. He awarded a 6% impairment of the whole person.

Trigger point injections and occipital nerve blocks continued through 1994 and into 1995 for the diagnoses of cervical radiculitis and migraine headaches. Dr. Selma Wilson prescribed a muscle stimulator (MENS Unit) on February 24, 1995, for relaxation of muscle spasms and it was effective in controlling thoracic and neck pain.

On June 26, 1995, Petitioner saw Benjamin C. Guerra, M.D. Dr. Guerra noted a CT myelogram and an MRI revealed a significant moderate-sized anterior extradural defect at C6-7 with amputation of the nerve root sleeves at that level. The finding, he believed, was consistent with Petitioner's symptoms. Dr. Guerra's notes reflect that Petitioner elected to forgo continued conservative treatment and undergo surgery. There is no indication Petitioner had surgery.

On June 9, 1996, Dr. Selma Wilson reported that Petitioner "may need trigger points due to return of MENS unit." Her treatment plan for Petitioner included the continued use of the MENS Unit and Petitioner was able to retain one and continued to use it.

A January 29, 1997 consultative report by Barbara A. Brown, R.N., a medical review specialist with Intracorp, and James E. Bailey, M.D., a physician reviewer, addressed a question apparently raised by Respondent as to the necessity for trigger point injections every few weeks for the ___ injury. Dr. Bailey contacted Dr. Selma Wilson and reported that Petitioner's muscle stimulator was controlling the myofascial disease and had almost eliminated the need for trigger point injections. Dr. Selma reported that the occipital nerve blocks control the occipital headaches and "tender thickened occipital nerves" for "3-4 weeks at a time." Dr. Bailey advised the "continuation of blocks for 3 more months at 3-4 week intervals and if no change re-evaluate the problem."

Petitioner continued bilateral occipital nerve blocks through at least September 2002, but the trigger point injections appeared to have ceased by mid-1995.

A March 1, 2002 peer review by David H. Trotter, M.D., concluded (1) that Petitioner's ___ injury was exclusively a sprain/strain, self-limited injury that would have been expected to resolve within three or four months, with or without medical intervention; (2) that there is no evidence of any acute residual and/or chronic residual injuries attributable to the ___ injury; and (3) that no ongoing diagnostic or therapeutic intervention, including trigger point injections and occipital nerve blocks, are reasonable or medically necessary.

The March 31, 2003 IRO decision concluded the trigger point injections were not medically necessary for the treatment of Petitioner's condition because (1) the injections provide only short-term subjective benefits; (2) certain conservative treatments have not been explored while other conservative treatments have been used only minimally; and (3) psychological issues have not been adequately explored.

The only question in this proceeding is whether trigger point injections are reasonable and medically necessary to treat the neck pain, muscle spasms or occipital headaches Petitioner is experiencing. Whether the neck pain, muscle spasms and occipital headaches emanate from the compensable injury or from some other condition is a question for the Commission.

The evidence shows that Petitioner began to experience neck pain, muscle spasms and occipital headaches immediately following the compensable injury and that he continues to experience them. Trigger point injections were used until mid-1995 to treat the neck pain and muscle spasms. Petitioner began using a MENS Unit in February 1995, found it effective for the neck pain and muscle spasms, and ceased receiving trigger point injections shortly thereafter. The trigger point injections were not used to treat the occipital headaches. The treating physicians used bilateral occipital nerve blocks to treat the occipital headaches. Petitioner has not requested preauthorization for bilateral occipital nerve blocks.

The trigger point injections are not medically necessary to treat the neck pain and muscle spasms. The trigger point injections are not medically necessary to treat the occipital headaches.

Petitioner failed to sustain the burden of proof in this proceeding of showing that trigger point injections are reasonable and medically necessary to treat his neck pain, muscle spasms or occipital headaches.

II. FINDINGS OF FACT

1. ____ (Petitioner) sustained a work-related injury on or about ____, when the company vehicle he was driving was struck from behind. Petitioner sustained whip-lash-type injuries to his neck.
2. An October 30, 1992 electromyographic study indicated a C7 radiculopathy.
3. March 4, 1993 diagnostic tests found no evidence of cervical radiculopathy on either side or peripheral neuropathy in either upper extremity but did diagnose a rare hereditary instability of muscle cell membrane.
4. A June 1995 CT myelogram and an MRI revealed a significant moderate sized anterior extradural defect at C6-7 with amputation of the nerve root sleeves at that level.
5. Multiple practitioners treated Petitioner.
6. Beginning in January 1993, Petitioner was treated with epidural steroid injections (ESIs or trigger point injections) for neck pain and muscle spasms and with bilateral occipital nerve blocks for occipital headaches.
7. Petitioner began using a muscle stimulator (MENS Unit) in February 1995, found it effective for the neck pain and muscle spasms, and ceased receiving trigger point injections shortly thereafter.
8. Petitioner continued receiving bilateral occipital nerve blocks through at least September 2002.

9. Petitioner continues to experience occipital headaches and neck pain.
10. The trigger point injections were not used to treat the occipital headaches.
11. Petitioner requested preauthorization for trigger point injections to treat neck pain, muscle spasms and occipital headaches.
12. Petitioner has not requested preauthorization for bilateral occipital nerve blocks.
13. Pacific Employers Insurance Company (Respondent) denied the preauthorization request of Petitioner for trigger point injections as not medically necessary.
14. By letter dated March 31, 2003, the Texas Medical Foundation, the Independent Review Organization (IRO), concluded trigger point injections were not medically necessary.
15. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
16. Petitioner timely requested a hearing to contest the Commission's decision.
17. By letter dated May 1, 2003, the Commission issued a notice of hearing for 11:00 a.m. on May 29, 2003.
18. On May 22, 2003, the hearing on the merits was reset to 9:00 a.m. on July 10, 2003.
19. On July 10, 2003, Administrative Law Judge (ALJ) Howard S Seitzman convened the hearing on the merits.
20. Based upon Petitioner's failure to appear, the ALJ issued a Conditional Order of Dismissal for Want of Prosecution.
21. By Order dated August 27, 2003, the ALJ set aside the Order of Dismissal for Want of Prosecution, reopened the record, and entered a Case Management and Scheduling Order.
22. A hearing convened on November 3, 2003, before ALJ Howard S. Seitzman. Petitioner appeared *pro se* by telephone and Laurie S. Gallagher was present representing Respondent. There were no contested issues of notice or jurisdiction.
23. Because Petitioner did not have certain exhibits, the record remained open to give Petitioner an opportunity to review the documents and determine if he wished to reopen cross-examination of Respondent's witnesses. At Petitioner's request, the hearing on the merits reconvened on November 19, 2003.
24. By Order dated December 2, 2003, the ALJ noticed a post-hearing telephone conference to consider reopening the evidentiary record for the results of a March 3, 2003 medical evaluation scheduled with Glenn Andersen, M.D. The telephone conference convened on December 10, 2003, and the parties stated that no report existed as Dr. Andersen did not perform the requested medical evaluation. The record closed on December 10, 2003.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. The trigger point injections are not medically necessary to treat Petitioner's neck pain and muscle spasms.
8. The trigger point injections are not medically necessary to treat Petitioner's occipital headaches.

ORDER

THEREFORE IT IS ORDERED that Petitioner ___'s request for the preauthorization of trigger point injections to treat his neck pain, muscle spasms or occipital headaches is **DENIED**.

SIGNED January 9, 2004.

HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS