MEDICAL CONTESTED CASE HEARING NO 09144
M6-09-17326-01

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 March 5, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that radiofrequency neurotomy at C2-3 and C6-7 is not reasonably required health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by BT, ombudsman.
Respondent/Carrier appeared and was represented by CF, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable cervical injury on _____. Medical records in evidence identify the compensable injury as a herniated disc at C4-5. Little information regarding the injury or the treatment provided for the injury prior to 2007 was offered by either party. Claimant testified that Dr. KP had performed a radiofrequency neurotomy in his cervical spine in 2006 and the effects of that procedure had lasted about a year. Dr. KP's medical records and correspondence refer to the earlier radiofrequency neurotomy but one of those records, an office visit summary dated April 21, 2008, states:

> (Claimant) complains of severe persistent cervical pain radiating into his right shoulder. I initially thought it was facet joint pain, but RF neurotomy did not provide sustained relief so I believe it is related to chemical radiculopathy caused by C4-5 disc herniation demonstrated on his MRI following his work related injury.

In contrast, on July 11, 2008, Dr. KP wrote:

> I have made every effort possible to obtain preauthorization approval to perform radiofrequency neurotomy to denervate his cervical facet joints. This treatment provided relief lasting approximately one year when done in the past.

Dr. KP's chart notes of September 15, 2008, stated that he intended to perform diagnostic right cervical medial branch blocks from T-1 through C-7, and if he confirmed facet joint pain then he would treat it with radiofrequency neurotomy. A request for radiofrequency neurotomy was thereafter submitted to (Name) for preauthorization. In a report with a request date of October 6, 2008, the utilization review agent (URA) noted that Claimant had a diagnosis of cervical

radiculopathy and denied the requested procedure in compliance with the Official Disability Guidelines (ODG). The URA noted that Claimant had undergone a medial branch block on September 18, 2008, with 100% relief from pain in the hour after the injection and 40% relief after four hours. Despite the information regarding the medial branch block, the URA determined that Claimant did not meet the requisites in the ODG.

Reconsideration of the denial was requested and obtained. In a report dated November 5, 2008, (with a request date of October 28, 2008) the URA, Dr. TT, MD, upheld the previous denial, stating that the ODG did not support the multi-level radiofrequency neurotomy request. Dr. TT indicated that he had attempted to discuss the matter with Dr. KP but was unsuccessful. The appeal to the IRO followed.

The Texas Department of Insurance selected (Independent Review Organization) to act as the IRO. (Independent Review Organization) submitted the case to a physician reviewer licensed in Physical Medicine & Rehabilitation. The physician reviewer noted that he had progress notes from an unknown provider dated from November 13, 2006, through October 28, 2008; examination evaluations by Dr. KP from November 12, 2007, through September 15, 2008; reports of epidural injections on December 20, 2007, and June 26, 2008; letters from Dr. KP in July and August of 2008; preauthorization requests from August and October; and adverse determinations including the ones requested on October 6, 2008, and October 28, 2008. The physician reviewer utilized the ODG and his medical judgment, clinical experience and expertise in accordance with accepted medical standards in reaching his decision to uphold Carrier's previous denial. In his report, the physician reviewer stated:

> Per criteria set for by Official Disability Guideline, a medical necessity for a radiofrequency neurotomy has not been established. The above-noted reference indicates that if therapeutic procedures are to be performed to the cervical facet joints, there must be documented signs and symptoms consistent with a cervical facet mediated pain syndrome, and there must be no evidence of a cervical radiculopathy. The records available for review do document the presence of signs and symptoms on physical examination consistent with a cervical radiculopathy.

The physician reviewer then went on to state that diagnostic medial branch blocks are typically performed but the records available for review did not confirm a recent attempt at treatment in that form. The physician reviewer failed to note that both URA reports mentioned the cervical medial branch blocks that had been administered on September 18, 2008, and listed the results of those diagnostic injections.

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 (Texas Labor Code §408.021). "Health care reasonably required" is defined 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, generally accepted standards of medical practice recognized in the medical community (Texas Labor Code §401.011(22-a)). "Evidence based medicine" means 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 (Texas Labor Code §401.011 (18-a)).

The current edition of the ODG gives the following procedure summary for facet joint radiofrequency neurotomy:

> Under study. Conflicting evidence is available as to the efficacy of this procedure and approval of treatment should be made on a case-by-case basis. Studies have not demonstrated improved function. One randomized controlled trial was performed on patients with neck pain at the C3 to C7 level after a motor vehicle accident. There was a success rate of 75% with one or two treatments with a median time to return to a 50% preoperative level of pain of approximately 9 months. (Lord, 1996) A similar duration of pain relief (219 days) was found in a prospective non-randomized trial. Complete pain relief was obtained by 71% of patients (for a "clinically satisfying period"). (McDonald, 1999) A recent retrospective review was conducted on patients with diagnosed cervical facet syndrome (via controlled blocks) and found that 80% of patients had pain relief with a mean duration of 35 weeks per injection. The mean duration of relief was less at the C2-3 joint than at other levels, and was also less for patients on compensation (non-significant difference). Pain was not measured with a formal pain rating instrument. (Barnsley, 2005) (ConlinII, 2005) The procedure is not recommended to treat cervicogenic headaches (See Facet Joint radiofrequency neurotomy, Cervicogenic Headaches). Potential side effects include painful cutaneous dysesthesias, increased pain due to neuritis or neurogenic inflammation, and cutaneous hyperesthesia. (Boswell, 2005) The clinician must be aware of the risk of developing a deafferentation centralized pain syndrome as a complication of this and other neuroablative procedures. This procedure is commonly used to provide a window of pain relief allowing for participation in active therapy. (Washington, 2005) Evidence is lacking to support intra-articular steroid injections or radiofrequency neurotomy. (Haldeman, 2008)
> *Factors associated with failed treatment:* These include increased pain with hyperextension and axial rotation (facet loading), longer duration of pain and disability, significant opioid dependence, and history of back surgery. See also Cervicogenic headache, facet joint neurotomy. See the Low Back Chapter for further references.

Criteria for use of cervical facet radiofrequency neurotomy:

1. Treatment requires a diagnosis of facet joint pain. See Facet joint diagnostic blocks.
2. Approval depends on variables such as evidence of adequate diagnostic blocks, documented improvement in VAS score, and documented improvement in function.
3. No more than two joint levels are to be performed at one time (See Facet joint diagnostic blocks).
4. If different regions require neural blockade, these should be performed at intervals of not sooner than one week, and preferably 2 weeks for most blocks.
5. There should be evidence of a formal plan of rehabilitation in addition to facet joint therapy.
6. While repeat neurotomies may be required, they should not be required at an interval of less than 6 months from the first procedure. Duration of effect after the first neurotomy should be documented for at least 12 weeks at ≥ 50% relief. The current literature does not support that the procedure is successful without

sustained pain relief (generally of at least 6 months duration). No more than 3 procedures should be performed in a year's period.

The physician reviewer's opinion that the radiofrequency neurotomies should be denied because of the signs and symptoms of cervical radiculopathy no longer has support in the evidence-based medicine. Carrier argues that in April of 2008, Dr. KP opined that Claimant's pain is due to cervical radiculopathy and did not arise out of the facet joints. Dr. KP noted that the relief afforded by the 2006 radiofrequency neurotomy and the medial branch blocks were evidence of facet mediated pain.

Health care providers are directed to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be reasonably required. (28 Tex. Admin. Code § 137.100 (Rule 137.100). The ODG no longer excludes radiofrequency neurotomy if radiculopathy is present, but it continues to require evidence of a formal plan for rehabilitation in addition to the facet joint therapy as a criteria. There is no evidence of a formal plan for rehabilitation in this case. The ODG also states that no more than two joint levels are to be performed at one time. The physician reviewer's analysis and explanation states that medical necessity for treatment in the form of a radiofrequency neurotomy "from the C2/C3 to C6/C7 levels would not appear to be established." In his Physician's Summary dated January 12, 2009, Dr. KP stated that he was requesting authorization for a "therapeutic right C3 though C7 medial branch RF neurotomy". Treatment to more than two joint levels was requested and reviewed by the IRO. The IRO's denial of the requested care, as outlined in the physician reviewer's analysis, is consistent with the provisions of the ODG.

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 _____, Claimant sustained a compensable injury while employed by (Employer).

   C. The Texas Department of Insurance selected (Independent Review Organization) as the Independent Review Organization (IRO).

   D. The IRO upheld Carrier's denial of the requested radiofrequency neurotomy at C2-3 and C6-7.

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. Claimant presented no evidence of a plan for formal rehabilitation in conjunction with the requested facet joint.

4. The preponderance of the evidence is not contrary to the IRO's determination that the requested radiofrequency neurotomy is not supported by the ODG.

5. Radiofrequency neurotomy at C2-3 and C6-7 is not reasonably required medical treatment for the compensable injury of _____.

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 IRO that radiofrequency neurotomy at C2-3 and C6-7 is not reasonably required medical care for the compensable injury of _____.

DECISION

Radiofrequency neurotomy at C2-3 and C6-7 is not reasonably required medical care for the compensable injury of _____.

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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063

Signed this 6th day of March, 2009.

KENNETH A. HUCHTON
Hearing Officer