MEDICAL CONTESTED CASE HEARING NO. 09180
M6-09-18131-01

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 June 8, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to cervical facet injections at C5-6 and C6-7?

PARTIES PRESENT

Claimant appeared and was represented by PC, an attorney. Petitioner/Provider Dr. B, M.D. appeared by telephone. Respondent/Carrier appeared and was represented by HDP, an attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury and was treated for closed head injury, cervical, thoracic and lumbar sprain, disc bulges at L4-5, C5-6 and C6-7, contusion of the right knee, left shoulder infraspinatus tendon tear and right shoulder tendonitis with pain medication, non-steroidal anti-inflammatory medication, muscle relaxant medication and physical therapy.

After Dr. B requested pre-authorization for the proposed procedure, two utilization reviews were conducted. The first was performed by a physician board certified in both preventative medicine and occupational medicine. He opined that the proposed procedure was not medically necessary. His report indicates that the rationale behind his denial of the procedure was that no evidence of facet mediated pain is reported and therefore, the claimant did not meet all of the indications found in the Official Disability Guidelines (ODG).

The second utilization review was conducted by an orthopedic surgeon who noted that while the ODG indicate the use of facet diagnostic blocks in patients who have pain complaints, they also require that the presentation be consistent with facet joint pain signs and symptoms which are not documented in the medical records.

Following this denial, a request for review by an IRO was made. The IRO reviewer, also an orthopedic surgeon, upheld the denial of the cervical facet injections at C5-C6 and C6-C7. In his explanation for his denial he opines that there is little or no documentation of specific facet joint mediated pain. Although there are bulging discs, there is no specific facet joint arthropathy for evidence of facet joint inflammation.

Claimant's requesting doctor, Dr. B, M.D., a board certified orthopedic surgeon, testified that the claimant meets the criteria outlined in the ODG regarding facet signs and symptoms and the criteria for the use of diagnostic blocks for facet nerve pain. Dr. B testified that the claimant

presented with tenderness to palpation in the paravertebral areas over the facet regions; had decreased cervical range of motion; and that there was an absence of radicular and/or neurologic findings. He noted that the MRI findings were not dispositive of the presence of or lack of facet pain signs. Dr. B further noted that the claimant's neck pain, headache, shoulder pain, suprascapular pain, scapula pain, and upper arm pain also supported findings of facet pain although some overlap exists as it relates to the claimant's bilateral shoulder pathology.

Respondent Carrier's expert, Dr. C, M.D., also an orthopedic surgeon, testified that the medical records failed to document the specific facet levels relative to the examination findings although the claimant met the other criteria as described. However, Dr. B's testimony overcomes the apparent lack of specificity in the records relating to the tenderness over the facet levels at C5-6 and C6-7 and supports his finding of facet joint mediated pain as defined by the ODG.

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. Section 401.011(22-a) defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by Section 401.011(18-a) as 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 Division of Workers' Compensation has adopted treatment guidelines under Division Rule 137.100. That rule requires that health care providers provide treatment in accordance with the current edition of the ODG, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the Texas Labor Code. The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the ODG.

With regard to the facet pain signs and symptoms, the ODG provides,

> Recommend diagnostic criteria below. The cause of this condition is largely unknown, and the diagnosis is one of exclusion. One commonly cited cause is "whiplash injury" (Lord 1996). The most common cervical levels involved are generally C2-3 and C5-6 (Barnsley, 2005). The condition has been described as both acute and chronic, and includes symptoms of neck pain, headache, shoulder pain, suprascapular pain, scapula pain, and upper arm pain. (Clemans, 2005) Signs in the cervical region include: (1) tenderness to palpation in the paravertebral areas (over the facet region); (2) decreased range of motion; & (3) absence of radicular and/or neurologic findings. (Fukui, 1996) Diagnosis is made with controlled comparative blocks as uncontrolled blocks are associated with high false-positive rates. See Facet joint diagnostic blocks; Facet joint radiofrequency neurotomy; Facet joint therapeutic steroid injections.

With regard to cervical facet procedure, the ODG provides,

> Recommended prior to facet neurotomy (a procedure that is considered "under study"). Diagnostic blocks are 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 MBB. 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 27% to 63%) but this does not appear to be cost effective or to prevent the incidence of false positive response to the neurotomy procedure itself.
> *Technique:* The described technique of blocking the medial branch nerves in the C3-C7 region (C3-4, C4-5, C5-6, and C6-7) is to block the named medial branch nerves (two injections). Authors have described blocking C2-3 by blocking the 3rd occipital nerve. Another technique of blocking C2-3 is to block at three injection points (vertically over the joint line, immediately above the inferior articular facet at C2 and immediately below the superior articular facet at C3). (Barnsley, 1993) The volume of injectate for diagnostic medial branch blocks must be kept to a minimum (a trace amount of contrast with no 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. (Washington, 2005) (Manchikanti , 2003) (Dreyfuss, 2003) See the Low Back Chapter for further references.
> **Criteria for the use of diagnostic blocks for facet nerve 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 be approximately 2 hours for Lidocaine.
> 2. Limited to patients with cervical 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 for at least 4-6 weeks.
> 4. No more than 2 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 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.
11. Diagnostic facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level.
12. It is currently not recommended to perform facet blocks on the same day of treatment as epidural steroid injections or stellate ganglion blocks or sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.

Based on a careful review of the evidence presented in the hearing, the provider and the claimant met their burden of overcoming the IRO decision by a preponderance of the evidence-based medicine. Dr. B's proposed treatment in this case is based on the ODG and the evidence revealed that the claimant meets all of the necessary criteria for treatment listed in the ODG. The preponderance of the evidence-based medicine is contrary to the decision of the IRO and, consequently, the claimant is entitled to the proposed cervical facet injections at C5-6 and C6-7.

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 was the employee of (Employer).

   C. On _____, Claimant sustained a compensable injury.

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. Cervical facet injections at C5-C6 and C6-C7 are health care reasonably required 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 contrary to the decision of the IRO that cervical facet injections at C5-C6 and C6-C7 are not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is entitled to cervical facet injections at C5-C6 and C6-C7.

ORDER

Carrier is 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL RAY OLIVER, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723

Signed this 8th day of June, 2009.

Katherine D'Aunno-Buchanan
Hearing Officer