

MEDICAL CONTESTED CASE HEARING NO. 11041  
M6-10-28628-01

**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.

**ISSUE**

A contested case hearing was held on October 8, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to one lumbar facet injection under fluoroscopy, at the L1-2, L2-3, L3-4, and L4-5 spinal levels, for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared by telephone, and was assisted by Ombudsman FA; Carrier appeared, and was represented by Attorney JS.

**BACKGROUND INFORMATION**

Claimant sustained an injury to his low back as the result of a work-related lifting incident. He described his symptoms and treatment to date, indicating that since his previous injections have substantially, albeit temporarily, improved his quality of life, he wishes to proceed with the additional injections that are being proposed at this time.

**DISCUSSION**

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(22-a) 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 further defined in Texas Labor Code Section 401.011(18-a) 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. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, and 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. 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. Also, in accordance with Division Rule 133.308(t), "[a] decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties 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."

With regard to lumbar facet injections, the ODG states as follows:

Under study. Current evidence is conflicting as to this procedure and at this time no more than one therapeutic intra-articular block is suggested. If successful (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). If a therapeutic facet joint block is undertaken, it is suggested that it be used in consort with other evidence based conservative care (activity, exercise, etc.) to facilitate functional improvement. (Dreyfuss, 2003) (Colorado, 2001) (Manchikanti, 2003) (Boswell, 2005) See Segmental rigidity (diagnosis). In spite of the overwhelming lack of evidence for the long-term effectiveness of intra-articular steroid facet joint injections, this remains a popular treatment modality. Intra-articular facet joint injections have been popularly utilized as a therapeutic procedure, but are not currently recommended as a treatment modality in most evidence-based reviews as their benefit remains controversial. The therapeutic facet joint injections described here are injections of a steroid (combined with an anesthetic agent) into the facet joint under fluoroscopic guidance to provide temporary pain relief. (Dreyfuss, 2003) (Nelemans-Cochrane, 2000) (Carette, 1991) (Nelemans, 2001) (Slipman, 2003) (van Tulder, 2006) (Colorado, 2001) (ICSI, 2004) (Bogduk, 2005) (Resnick, 2005) (Airaksinen, 2006) An updated Cochrane review of injection therapies (ESIs, facets, trigger points) for low back pain concluded that there is no strong evidence for or against the use of any type of injection therapy, but it cannot be ruled out that specific subgroups of patients may respond to a specific type of injection therapy. (Staal-Cochrane, 2009)

*Systematic reviews endorsing therapeutic intra-articular facet blocks:*

*Pain Physician, 2005:* In 2005 there were two positive systematic reviews published in *Pain Physician* that stated that the evidence was moderate for short-term and limited for long-term improvement using this intervention. (Boswell, 2005) (Boswell, 2005) These results were based, in part, on five observational studies. These non-controlled studies were confounded by variables such as lack of confirmation of diagnosis by dual blocks and recording of subjective pain

relief, or with measures that fell under verbal rating and/or pain relief labels (measures that have been reported to have problems with validity). (Edwards, 2005)

*Pain Physician, 2007: Pain Physician* again published a systematic review on this subject in 2007 and added one additional randomized trial comparing intra-articular injections with sodium hyaluronate to blocks with triamcinolone acetonide. The diagnosis of facet osteoarthritis was made radiographically. (Fuchs, 2005) Two randomized trials were not included, in part, as they failed to include controlled diagnostic blocks. These latter articles were negative toward the use of therapeutic facet blocks. (Lilius, 1989) (Marks, 1992) An observational non-controlled study that had positive results was included that made the diagnosis of lumbar facet syndrome based on clinical assessment of “pseudoradicular” lumbar pain, including evidence of an increase of pain in the morning and with excessive stress and exercise (no diagnostic blocks were performed). (Schulte, 2006) With the inclusion of these two articles the conclusion was changed so that the evidence for lumbar intra-articular injections was “moderate” for both short-and long-term improvement of low back pain. (Boswell2, 2007)

*Complications:* These included suppression of the hypothalamic-pituitary-adrenal axis for up to 4 weeks due to steroids with resultant elevated glucose levels for less than a week. (Ward, 2002) There have been rare cases of infection (septic arthritis, epidural abscess and meningitis). (Cohen, 2007) Complications from needle placement include dural puncture, spinal cord trauma, intraarterial and intravenous injection, spinal anesthesia, neural trauma, pneumothorax, and hematoma formation. (Boswell2, 2007)

*Single photon emission computed tomography: (bone scintigraphy, SPECT scan):* Not recommended although recent research is promising. This technique is recommended based on the ability of radionuclide bone scintigraphy to detect areas of increased function, depicting synovial areas of inflammation as well as degenerative changes. Thirteen of 15 patients had a > 1 standard deviation pain score improvement at 1 month versus 7 of 32 patients with a negative or no scan. The benefit of the injection lasted for approximately 3 months and did not persist to 6 months. (Pneumaticos2, 2006) See also Facet joint diagnostic blocks (injections); Facet joint pain, signs & symptoms; Facet joint radiofrequency neurotomy; Facet joint medial branch blocks (therapeutic injections); & Segmental rigidity (diagnosis). Also see Neck Chapter and Pain Chapter.

**Criteria for use of therapeutic intra-articular and medial branch blocks, are as follows:**

1. No more than one therapeutic intra-articular block is recommended.
2. There should be no evidence of radicular pain, spinal stenosis, or previous fusion.
3. 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).
4. No more than 2 joint levels may be blocked at any one time.

5. There should be evidence of a formal plan of additional evidence-based activity and exercise in addition to facet joint injection therapy.

A comparison of Claimant's medical records with the five criteria for facet injections set forth above does show that Claimant meets many of the requirements enumerated in the ODG. However, Claimant's doctor has requested authorization for injections to be performed at four spinal levels, and the ODG recommends that only one or two levels be injected at a time. The requested treatment does not meet the ODG, and Claimant offered no other evidence-based medicine to establish that the requested treatment is health care reasonably required for his compensable injury of \_\_\_\_\_. For this reason, a decision in Carrier's favor must be entered as to the sole issue presented for resolution in this case.

Even though all the evidence presented may not have been discussed in detail, it was considered; the Findings of Fact and Conclusions of Law are based on all of the evidence presented.

### **FINDINGS OF FACT**

1. On \_\_\_\_\_, Claimant was employed by (Employer).
2. On \_\_\_\_\_, Employer subscribed to a policy of workers' compensation insurance issued by the Pacific Employers Insurance Company, Carrier.
3. On \_\_\_\_\_, Claimant's residence was not located within seventy-five miles of the (City) office of the Texas Department of Insurance, Division of Workers' Compensation.
4. 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.
5. On \_\_\_\_\_, Claimant sustained damage or harm to the physical structure of his body while he was within the course and scope of his employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.
7. One lumbar facet injection under fluoroscopy, at the L1-2, L2-3, L3-4, and L4-5 spinal levels, is not health care reasonably required for Claimant's compensable injury of \_\_\_\_\_.

### **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Good cause exists to conduct the Contested Case Hearing in this matter in the (City) Field Office.

3. The preponderance of the evidence-based medicine is not contrary to the decision of the Independent Review Organization that one lumbar facet injection under fluoroscopy, at the L1-2, L2-3, L3-4, and L4-5 spinal levels, is not health care reasonably required for Claimant's compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to one lumbar facet injection under fluoroscopy, at the L1-2 through L4-5 spinal levels, for his 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 **PACIFIC EMPLOYERS INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201**

Signed this 14<sup>th</sup> day of October, 2010.

Ellen Vannah  
Hearing Officer