

MEDICAL CONTESTED CASE HEARING NO. 18026

**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 Administrative Law Judge determines that Claimant is not entitled to a bilateral L4/L5 lumbar sacral radiofrequency thermocoagulation (RFTC), fluoroscopy, or sedation for the compensable injury of (Date of Injury).

**ISSUE**

A contested case hearing was held on September 12, 2018, with the record closing on September 20, 2018, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a bilateral L4/L5 lumbar sacral radiofrequency thermocoagulation (RFTC), fluoroscopy, and sedation for the compensable injury of (Date of Injury)?

The record was reopened to allow the parties to object to the admission of the order setting the CCH and related correspondence. On September 20, 2018, the record was closed after the parties did not object to the admission of Administrative Law Judge's Exhibit 2.

**PARTIES PRESENT**

The Petitioner/Claimant appeared and was assisted by EA, ombudsman. The Respondent/Carrier appeared and was represented by BQ, attorney.

**EVIDENCE PRESENTED**

The following witnesses testified:

Claimant/Petitioner: Claimant.

Carrier/Respondent: None.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 and ALJ-2.

Claimant/Petitioner: Exhibits CL-1 through CL-8.

Carrier/Respondent: Exhibits CR-A through CR-F.

## DISCUSSION

The compensable injury consists of a L4/L5 disc bulge, disc herniation at L5/S1, chronic pain syndrome, and bilateral mild facet arthropathy. Claimant was treated with physical therapy, laminectomy surgery, medication, multiple radiofrequency ablations of the lumbar sacral facets, and a spinal cord stimulator. On February 22, 2018, Claimant informed treating doctor, RW, M.D., that she had low back pain that radiated into both hips, legs, and groin areas. Dr. W noted that Claimant requested a different procedure (RFTC). Rather than requesting another facet radiofrequency ablation, Dr. W requested a bilateral L4/L5 lumbar sacral RFTC, fluoroscopy, and sedation to treat Claimant's low back pain that radiated into both hips, legs, and groin areas. Carrier denied Claimant's request for surgery and Claimant sought review by an IRO.

The IRO reviewer was identified as a licensed Texas doctor who is board certified in physical medicine and rehabilitation with a sub-specialty certification in pain medicine. The IRO reviewer determined that the requested medical procedure was not medically necessary for treatment of Claimant's medical condition because the Official Disability Guidelines (ODG) does not recommend RFTC as an effective treatment in reducing chronic discogenic low back pain. On July 16, 2018, Dr. W wrote a letter stating that the procedure was requested to treat facet hypertrophy and facet relaxed pattern low back pain, rather than discogenic low back pain. In addition, the IR reviewer stated that there was no rationale for the use of sedation and there were no exceptional factors noted to warrant nonadherence to the guideline recommendations.

Texas Labor Code §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 §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, 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 §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. 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. *See* Texas Labor Code §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 §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 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(s), "[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."

For the requested medical treatment, the ODG provides:

**ODG Recommendations for percutaneous intradiscal radiofrequency (thermocoagulation):**

Not recommended. Percutaneous intradiscal radiofrequency thermocoagulation (PIRFT) is not effective in reducing chronic discogenic low back pain.

Claimant presented her testimony and medical records, including medical reports and a July 16, 2018 letter from Dr. W, in support of her position that the preponderance of the evidence was contrary to the IRO's decision. However, the ALJ finds that Claimant did not meet her burden of proof to overcome IRO decision by a preponderance of the medical evidence. Claimant did not present persuasive medical evidence to establish that she met the ODG requirements for the requested surgery to treat Claimant's low back pain that radiates into both hips, legs, and groin areas. Claimant contends that the requested procedure is that same as Claimant's prior radiofrequency nerve ablations over the lumbar medial branch nerves/facets; however, Claimant's medical records acknowledge that the requested procedure is different from her prior facet radiofrequency procedures. The ODG does not recommend the procedure for chronic discogenic low back pain. Claimant failed to establish by a preponderance of the evidence that the requested procedure was consistent with other evidence-based medicine or that the proposed treatment met generally accepted standards of medical practice recognized in the medical community. Therefore, the ALJ determined that Claimant was not entitled to a bilateral L4/L5 lumbar sacral RFTC, fluoroscopy, and sedation.

The Administrative Law Judge 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 to the following facts:
  - A. Venue is proper in the (City) Field Office of the Workers' Compensation Division of the Texas Department of Insurance.
  - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Claimant sustained a compensable injury, which consists of an L4/L5 disc bulge, disc herniation at L5/S1, chronic pain syndrome, and bilateral mild facet arthropathy.
  - D. On (Date of Injury), Employer provided workers' compensation insurance through Travelers Indemnity Company of Connecticut, Carrier.
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 Administrative Law Judge's Exhibit Number 1.
3. Claimant does not meet the requirements of the ODG for a bilateral L4/L5 lumbar sacral RFTC, fluoroscopy, and sedation.
4. A bilateral L4/L5 lumbar sacral RFTC, fluoroscopy, and sedation is not health care reasonably required for the compensable injury of (Date of Injury).

## **CONCLUSIONS OF LAW**

1. The Workers' Compensation Division of the Texas Department of Insurance 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 the Claimant is not entitled to a bilateral L4/L5 lumbar sacral RFTC, fluoroscopy, and sedation for the compensable injury of (Date of Injury).

**DECISION**

Claimant is not entitled to a bilateral L4/L5 lumbar sacral RFTC, fluoroscopy, and sedation for the compensable injury of (Date of Injury).

**ORDER**

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code §408.021.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANIES**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE CO.  
D/B/A CSC-LAWYERS INCORPORATING SERVICES CO.  
211 EAST 7th STREET, STE. 620  
AUSTIN, TX 78701-3218**

Signed this 20th day of September, 2018.

Rabiat Ngbwa  
Administrative Law Judge