

MEDICAL CONTESTED CASE HEARING NO. 19004

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 (DWC). For the reasons discussed herein, the Administrative Law Judge (ALJ) determines that:

Claimant is entitled to Botox injections (x 2) for the compensable injury of (Date of Injury). Claimant is not entitled to occipital nerve block injections (x 12) for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On February 19, 2019, Warren E. Hancock, Jr., a DWC administrative law judge, held a contested case hearing 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 occipital nerve block injections (x12) and Botox injections (x2) for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was represented by JC, attorney. Insurance Carrier appeared and was represented by RL, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: None.

The following exhibits were admitted into evidence:

ALJ's Exhibits: ALJ-1 and ALJ-2.

Claimant's Exhibits: C-1 through C-14.

Insurance Carrier's Exhibits: CR-A through CR-G.

DISCUSSION

Claimant is a (Age)-year-old former professional hockey player for Employer who was injured in a game on (Date of Injury) when he received a concussion. Claimant has been referred to BV, M.D., in (City), for residual chronic headaches. Claimant has a post-concussion history of debilitating headaches daily that prevented his return to his hockey career.

Dr. V has indicated that the headache is a residual of the concussion. He referred Claimant to AY, M.D., a neurologist, for nerve blocks and injection therapy to address the post-concussion headaches. She has treated Claimant with these modalities in the past and reported decreased pain and improved range of motion in the neck. On June 13, 2018, Dr. Y requested occipital nerve block injections x 12, and Botox injections x 2. A review was done by RB, M.D., an anesthesiologist, as Carrier's utilization reviewer, on August 10, 2018. Dr. B approved the requested Botox injections as medically necessary and supported by ODG. However, occipital nerve blocks were denied on grounds that, although ODG supports use of occipital nerve blocks to treat headaches, in this case the physical examinations do not demonstrate findings consistent with occipital neuralgia at that time to warrant repeat injections. On September 18, 2018, the case was reviewed by LG, M.D. as reconsideration reviewer. This review erroneously stated that the utilization reviewer had denied both the occipital nerve blocks and the Botox injections. However, his review was limited to discussion of the occipital nerve blocks for which he upheld the denial on grounds that the response to the most recent injection was not documented and that the ODG does not overwhelmingly support these injections for headache.

Claimant timely requested review of treatment denial by an IRO. The review was dated November 18, 2018 by a medical doctor board certified in anesthesia and pain management who had been in practice more than 10 years. Although the IRO review purported to cover both the occipital nerve blocks and the Botox, the reviewer limited his discussion to greater occipital nerve blocks. The reviewer indicated that the response to the last injection was not documented and that the ODG did not "overwhelmingly support" those injections, and he found the requested greater occipital nerve blocks were not medically necessary at that time.

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 (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 Section 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. Texas Labor Code Section 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 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 (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."

The ODG provides as follows regarding greater occipital nerve blocks:

Greater occipital nerve block, diagnostic

Under study.

See also *Greater occipital nerve block, therapeutic* and the *Head Chapter*.

Greater occipital nerve blocks (GONB) have been recommended by several organizations for the diagnosis of both occipital neuralgia and cervicogenic headaches. It has been noted that both the International Association for the Study of Pain and World Cervicogenic Headache Society focused on relief of pain by analgesic injection into cervical structures, but there was little to no consensus as to what injection technique should be utilized and lack of convincing clinical trials to aid in this diagnostic methodology. (*Haldeman, 2001*) Difficulty arises in that occipital nerve blocks are non-specific. This may result in misidentification of the occipital nerve as the pain generator. (*Biondi, 2005*) (*Leone, 1998*) (*Aetna, 2006*) In addition, there is no research evaluating the block as a diagnostic tool under controlled conditions (placebo, sham, or other control). (*Bogduk, 2004*) An additional problem is that patients with both tension headaches and migraine headaches respond to GONB. In one study comparing patients with cervicogenic headache to patients with tension headaches and migraines, pain relief was found

by all three categories of patients (54.5%, 14% and 6%, respectively). Due to the differential response, it has been suggested that GONB may be useful as a diagnostic aid in differentiating between these three headache conditions. (*Bovim, 1992*)

Greater occipital nerve block, therapeutic

Under study for treatment of occipital neuralgia and cervicogenic headaches.

See also *Greater occipital nerve block, diagnostic* and the *Head Chapter*.

There is little evidence that the block provides sustained relief, and if employed, is best used with concomitant therapy modulations. (*Biondi, 2005*) Current reports of success are limited to small, noncontrolled case series. Although short-term improvement has been noted in 50-90% of patients, many studies only report immediate postinjection results with no follow-up period. In addition, there is no gold-standard methodology for injection delivery, nor has the timing or frequency of delivery of injections been researched. (*Haldeman, 2001*) (*Inan, 2001*) (*Vincent, 1998*) Limited duration of effect of local anesthetics appears to be one factor that limits treatment and there is little research as to the effect of the addition of corticosteroid to the injectate. (*Bogduk, 2004*)

Head Chapter: Greater occipital nerve block

Under study for use in treatment of primary headaches.

See also the Neck Chapter: *Cervicogenic headache, facet joint neurotomy; Greater occipital nerve block, diagnostic; and Greater occipital nerve block, therapeutic*.

Studies on the use of greater occipital nerve block (GONB) for treatment of migraine and cluster headaches show conflicting results, and when positive, have found response limited to a short-term duration. (*Ashkenazi, 2005*) (*Inan, 2001*) (*Vincent, 1998*) (*Afridi, 2006*)

The mechanism of action is not understood, nor is there a standardized method of the use of this modality for treatment of primary headaches. A recent study has shown that GONB is not effective for treatment of chronic tension headache. (*Leinisch, 2005*) The block may have a role in differentiating between cervicogenic headaches, migraine headaches, and tension-headaches. (*Bovim, 1992*)

It was the burden of Claimant to prove that the preponderance of the evidence is contrary to the decision of the IRO that the requested treatment is not medically necessary. Claimant offered a letter from his treating doctor, AY, M.D. dated December 27, 2018 which stated that Claimant should have monthly occipital nerve blocks, and Botox treatment every three months in her medical opinion. She stated that Claimant had improved significantly with nerve blocks and Botox injections in the past. However, she did not cite evidence-based medical evidence in support of her opinion, and did not address the IRO discussion in this regard.

Carrier pointed out in its presentation that Botox injections had been authorized by the initial reviewer and that determination was not appealed by Carrier and subsequent statements by the reconsideration review and the IRO that Botox injections had been denied are inaccurate. Accordingly, the statement of the IRO that it was upholding denial of Botox injections is in error. However, Claimant failed to show that the preponderance of evidence-based medical evidence is contrary to the determination of the IRO that occipital nerve block injections are not medically necessary to treat Claimant's compensable injury at this time.

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 Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation coverage through Great Divide Insurance Company, Insurance Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury) in the form of at least the Insurance Carrier-accepted conditions of concussion.
 - E. Claimant's compensable injury is not covered by a worker's compensation healthcare network.
2. Insurance Carrier delivered to Claimant a single document stating the true corporate name of Insurance Carrier, and the name and street address of Insurance Carrier's registered agent, which document was admitted into evidence as Administrative Law Judge's Exhibit Number 2.

3. Botox injections (x 2) is health care reasonably required for the compensable injury of (Date of Injury).
4. Occipital nerve block injections (x 12) is not health care reasonably required for the compensable injury of (Date of Injury).

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 Botox injections (x 2) is not health care reasonably required for the compensable injury of (Date of Injury).
4. The preponderance of the evidence is not contrary to the decision of the IRO that occipital nerve block injections (x 12) is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to Botox injections (x 2) for the compensable injury of (Date of Injury). Claimant is not entitled to occipital nerve block injections (x 12) for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **GREAT DIVIDE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TX 75201-3136**

Signed this 27th day of February, 2019.

Warren E. Hancock, Jr.
Administrative Law Judge