MEDICAL CONTESTED CASE HEARING NO. 19009

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 not entitled to trigger point injections, 3 or more muscles, left flank battery site for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On July 15, 2019, Warren E. Hancock, Jr., a DWC administrative law judge, held a contested case hearing to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to trigger point injections, 3 or more muscles, left flank battery site?

PARTIES PRESENT

Claimant appeared and was assisted by MR, ombudsman. Insurance Carrier appeared and was represented by RJ, attorney, who appeared by telephone at his request.

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-6.
>
> Insurance Carrier's Exhibits: CR-A through CR-F.

DISCUSSION

Claimant is a (Age)-year-old manager for Employer. On (Date of Injury) he was crossing the area between two machines when his feet became entangled in plastic tie wraps and he fell, injuring his back, right knee and left ankle. Claimant had surgery on the left ankle on October 29, 2013 by JW, M.D. for internal derangement of the left ankle with arthroscopic debridement and chondroplasty, and superficial peroneal nerve neurolysis. Claimant continued to have pain after his surgery and was referred to NA, D.O., a pain management specialist. Dr. A implanted a spinal cord stimulator for diagnosis of left foot and ankle complex regional pain syndrome on February 23, 2016. Dr. A reported that Claimant did well after surgery with at least 70% improvement. However, Claimant had some pain around the battery site of the stimulator in his left flank. Dr. A gave trigger point injections in the right lumbar area at the battery site on September 24, 2018. On a subsequent visit on November 19, 2018, Dr. A noted that Claimant was still having some pain around the battery site, and that trigger point injection therapy at the battery site had been efficacious in alleviating the pain. He noted that further trigger point injections may be offered in the future.

Dr. A requested additional trigger point injections, 3 or more muscles left flank battery site. This request was reviewed by NM, M.D., a specialist in anesthesia and pain management, as Insurance Carrier's utilization reviewer on January 15, 2019. Dr. M recommended denial of the request for additional trigger point injections, stating that the documentation failed to substantiate circumscribed trigger points with evidence of twitch response upon palpation as well as referred pain as discussed by the Official Disability Guidelines (ODG). Dr. A appealed the denial, which was reconsidered on February 22, 2019 by LG, D.O., a specialist in anesthesia. Dr. G also recommended denial of the request citing the absence of documentation of twitch response and referred pain upon palpation and stating that there was no indication that Claimant had a true therapeutic response or documented functional benefits from the previous injections.

Claimant requested review of these denials by an Independent Review Organization (IRO) and this was done on March 8, 2019 by a board-certified anesthesiologist/pain medicine specialist. The reviewer upheld the denials by Insurance Carrier's utilization reviewers, citing the lack of evidence of therapeutic effect or functional benefit from the previous injections, the lack of documentation of actual trigger points with twitching, jump sign or referral of pain upon palpation to meet ODG criteria for injection. From these denials, this appeal was timely perfected.

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 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."

With regard to trigger point injections, the ODG provides as follows:

> **TRIGGER POINT INJECTIONS (TPIs)**
>
> Not recommended in the absence of myofascial pain syndrome. When this treatment is indicated, studies have not supported the claim that ultrasound guidance for trigger point localization is superior to simple palpation techniques. See the criteria for use below.
>
> See the *Pain Chapter* for more information and references.
>
> Criteria for the use of trigger point injections:
>
> Trigger point injection (TPI) with a local anesthetic with or without steroid may be recommended for the treatment of chronic low back or neck pain with myofascial pain syndrome (MPS) when all of the following criteria are met:
>
> (1) Documentation of circumscribed trigger points with a twitch response and referred pain upon palpation;
>
> (2) The symptoms have persisted for more than three months;

(3) Medical management therapies (such as ongoing stretching exercises, physical therapy, NSAIDs, and muscle relaxants) have failed to control the pain;

(4) The indication is not radiculopathy (however, if a patient has MPS plus radiculopathy, a TPI may be given to treat the MPS);

(5) A maximum of 3-4 injections are performed per session;

(6) Repeat injections meet the following criteria:

(a) Greater than 50% pain relief with reduced medication use was obtained for six weeks after the previous injection and

(b) There is documented evidence of functional improvement AND

(c) At least two months have passed since the last injection;

(7) The TPI does not contain any substance (e.g., saline or glucose) other than local anesthetic with or without steroid;

(8) Ultrasound guidance is not used;

(9) Ongoing conservative treatment is also being administered, including home exercise and stretching. Use as a sole treatment is not recommended;

If pain persists after 2 to 3 repeat injections, the treatment plan should be re-examined because such a response may indicate an incorrect diagnosis, a lack of success with this procedure, or a failure to incorporate other more conservative treatment modalities for myofascial pain. It should be remembered that trigger point injections are considered an adjunct, not a primary treatment.

The primary goal of trigger point therapy is the short-term relief of pain and tightness of the involved muscles in order to facilitate participation in an active rehabilitation program and the restoration of functional capacity. The evidence for TPIs when used as a sole treatment for patients with chronic low-back pain (regardless of injectate) is inconclusive, and the treatment does not appear to be more effective than laser or ultrasound. The effectiveness of trigger point injection is uncertain, in part due to the difficulty of demonstrating the advantages of active medication over saline injection. Needling alone may be responsible for some of the therapeutic response. These injections are not recommended for typical chronic low back or neck pain, nor are they recommended for radicular pain. (*Scott, 2005*) (*Scott, 2008*) Although there have been several descriptions of and pilot studies on ultrasound-guided trigger point injections, no quality trials have demonstrated any superiority over conventional injection. Therefore, ultrasound guidance is not recommended.

The advantage of this treatment appears to be in enabling patients to begin remedial exercise therapy more quickly. TPIs are generally considered an adjunct rather than a

primary form of treatment and should not be offered as either a primary or a sole treatment modality. Steroid injection is not generally recommended, nor is botulinum toxin. (*Bigos, 1999*) (*Nelemans, 2000*) (*Vad, 2002*) (*BlueCross, 2004*) (*van Tulder, 2006*) (*van Tulder, 2001*) (*Peloso, 2007*) (*Ho, 2007*) An updated Cochrane review of injection therapies (epidural steroid, facet, trigger point) 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, 2009*).

Dr. A submitted a response to the IRO decision dated May 9, 2019 in which he asserted his opinion that the proposed injections are necessary to treat a side effect or complication of the original injury. However, Dr. A still failed to respond to the criticism of the utilization reviewers and the IRO that he had failed to document medical necessity according to evidence-based medicine as set out in the ODG. Dr. A's opinion was not persuasive in establishing that the preponderance of the medical evidence is contrary to the decision of the IRO in this case.

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 Liberty Insurance Corp, Insurance Carrier.

   D. Claimant sustained a compensable injury on (Date of Injury).

   E. The compensable injury is not covered by a Workers' Compensation Healthcare Network.

   F. The IRO determined on March 8, 2019 that Claimant is not entitled to trigger point injections, 3 or more muscles, left flank battery site as treatment for the compensable injury.

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. Trigger point injections, 3 or more muscles, left flank battery site 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 not contrary to the decision of the IRO that trigger point injections, 3 or more muscles, left flank battery site is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to trigger point injections, 3 or more muscles, left flank battery site for the compensable injury of (Date of Injury).

ORDER

Insurance 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 §408.021.

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

CORPORATION SERVICE COMPANY
211 E 7TH ST, SUITE 620
AUSTIN, TX 78701

Signed this 16th day of July, 2019.

Warren E. Hancock, Jr.
Administrative Law Judge