

MEDICAL CONTESTED CASE HEARING 21008

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 bilateral greater & lesser occipital nerve blocks for headaches under fluoroscopy, (Healthcare Provider 3), for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On April 21, 2021, Ana Thornton, an 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 bilateral greater & lesser occipital nerve blocks for headaches under fluoroscopy, (Healthcare Provider 3), for the compensable injury of (Date of Injury)?

PERSONS PRESENT

Petitioner/Claimant appeared and was assisted by PO, ombudsman. Respondent/Insurance Carrier appeared and was represented by JL, attorney. KE, M.D., was also present. Due to the COVID-19 pandemic, all individuals appeared via video and audio conference.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Insurance Carrier: KE, M.D.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibit: ALJ-1

Claimant's Exhibits: C-1 and C-2¹

Insurance Carrier's Exhibits: CR-A through CR-F

¹ Claimant offered Claimant's Exhibit C-3. As explained on the record, Insurance Carrier objected to its submission, and the objection was sustained. Subsequently, Claimant's Exhibit C-3 was not considered.

DISCUSSION

On (Date of Injury), Claimant was participating in a team building exercise in his work with Employer, (Employer), when he fell from a table and sustained a compensable injury. Claimant explained that the fall caused his head and neck to hit the carpeted concrete floor.

According to Claimant's testimony, he began receiving medical treatment on the day of the incident. His initial evaluations took place at (Healthcare Provider 1). At one (Healthcare Provider 1) visit, Claimant received an injection of Toradol for pain, which did not provide him relief. Claimant testified that a few months later, he received treatment from an (City) neurologist, Dr. M². Claimant explained that in March 2019, Dr. M administered an occipital nerve block, but Claimant did not have a full injection, as he informed Dr. M that he found the pain from the procedure to be too severe. Claimant testified that he nevertheless felt relief from the injection given by Dr. M.

Claimant indicated that after treatment with Dr. M, he had examinations with another neurologist, Dr. J. Claimant also had treatment with pain management specialist, CY, M.D., at (Healthcare Provider 2) in (City), Texas. Records in evidence reflect that Claimant began seeing Dr. Y on December 5, 2019. At that visit, Dr. Y noted in the "HPI" section of his report that Claimant informed him that he had prior injections for his posterior head pain "in May which he felt did provide relief but he was unable to complete the injections (due to) procedural pain." Dr. Y administered bilateral greater and lesser occipital nerve injections at that visit. Dr. Y indicated in the "Discussion Notes" that Claimant "potentially has post concussion syndrome causing headaches."

Claimant returned to Dr. Y's practice on December 26, 2019, and January 29, 2020. The "Interval History" portion of the January 29, 2020, record states that "Patient seen today for a f/u visit from 12/26/19. He is s/p a bilateral greater occipital nerve injection and bilateral lesser occipital nerve injection. He states he did not get any relief after the numbing medication wore off." Claimant acknowledged through his testimony that the bilateral greater and lesser occipital nerve injections administered by Dr. Y did not provide him relief.

Records in evidence show that Claimant received several assessments in 2020 with Dr. Y after January 29, 2020. On February 28, 2020, Claimant had a cervical spine MRI. At a June 2, 2020, visit with Dr. Y, Claimant received a medial branch block at C3 through C5. A follow-up examination with Dr. Y on June 29, 2020, shows that Claimant reported a "50% reduction" in pain from the procedure performed on June 2, 2020. The "Discussion Notes" from the June 29, 2020, record indicate that Claimant is to consider bilateral greater and lesser occipital nerve ablation. Claimant had a telemedicine visit with Dr. Y on August 27, 2020. At that appointment,

² Claimant identified treatment with two (City) neurologists, Dr. M and Dr. J, with no clarification as to first names.

Claimant informed Dr. Y that he “previously had bilateral greater and lesser occipital nerve blocks with benefit” and wanted to repeat them. Dr. Y informed Claimant that he would seek pre-authorization to have such treatment performed at (Healthcare Provider 3). Dr. Y’s notes show that at a telemedicine visit of October 14, 2020, he informed Claimant that the request for bilateral greater and lesser occipital nerve blocks had been denied.

Claimant testified that since the (Date of Injury), injury, he has only missed four days of work as a result of that injury. Claimant, however, is continuing to experience headaches, and memory and reactivity issues that he attributes to the (Date of Injury), injury.

On September 8, 2020, a denial letter was issued for the requested bilateral greater and lesser occipital nerve blocks. In the letter of September 8, 2020, RL, M.D., indicated that based on review of Claimant’s records of December 5, 2019, June 2, 2020, June 29, 2020, August 24, 2020, and August 27, 2020, showing treatment with Dr. Y, and based on review of Official Disability Guidelines (ODG), the request for bilateral occipital nerve blocks was not medically reasonable or necessary to treat Claimant’s condition. A request for reconsideration was made, and by letter dated October 12, 2020, signed by KA, M.D., the request for the bilateral occipital nerve blocks was again denied. The letters from both Dr. L and Dr. A reflect two unsuccessful attempts to reach Dr. Y to discuss Claimant’s treatment.

Claimant asked for an IRO to contest Insurance Carrier’s denial of the bilateral greater and lesser occipital nerve blocks. The Texas Department of Insurance, Division of Workers’ Compensation, appointed IRO Envoy Medical Systems, LP, to act as the IRO. On November 6, 2020, the IRO issued a notice of its review decision and upheld the previous adverse determination. The IRO reviewer, identified as a physician or other health care provider having a specialty in “pain medicine and anesthesiology” determined that the “Bilateral Greater and Lesser Occipital Nerve Blocks for Headaches under Fluoroscopy, (Healthcare Provider 3)” was not medically necessary.

The IRO reviewer noted that he/she reviewed Claimant’s medical records reflecting treatment at Dr. Y’s practice on December 5, 2019, December 26, 2019, January 29, 2020, March 4, 2020, May 7, 2020, June 2, 2020, June 29, 2020, August 24, 2020, August 27, 2020, and October 14, 2020. The IRO report also reflects that the IRO reviewer considered Claimant’s February 28, 2020, cervical spine MRI, a (Healthcare Provider 1) record dated August 19, 2019, and the September 8, 2020, and October 12, 2020, denial letters. The IRO reviewer stated the following in Claimant’s clinical history:

This (age) male sustained a head injury in (Date of Injury), when he fell off a table while blindfolded in a team building exercise. He has persistent cervical and occipital pain. Various modalities have been utilized including physical therapy and medications . . . Greater and lesser occipital bilateral nerve blocks were performed on 12/5/19 at the office. On follow up on 12/26/19 it was noted that the individual had no relief from that procedure. He has been seen

periodically since that time and symptoms remain the same; significant cervical and occipital pain . . .

The IRO reviewer indicated the following in his/her analysis:

The Official Disability Guidelines state that occipital nerve blocks are indicated for refractory chronic migraine headaches and not indicated for other types of headaches. Bilateral blocks are not recommended. In addition, the occipital nerve block performed in December provided no relief. Repeating the occipital nerve blocks are not indicated and do not meet peer reviewed material.

Claimant contends that the preponderance of the evidence contradicts the decision of the IRO. In support of his position, Claimant relied on his testimony and medical records, including records reflecting his treatment with Dr. Y from December 2019 through December 2020. To counter Claimant's position, Insurance Carrier presented the IRO determination and the testimony from KE, M.D., peer review physician. Dr. E provided his opinion with regard to review of Claimant's medical records and the sufficiency of medical evidence to justify necessity of the requested treatment. Dr. E agreed with the IRO reviewer that the request for bilateral greater and lesser occipital nerve blocks was not medically necessary.

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. The term "health care reasonably required" means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community. *See* Texas Labor Code §401.011(22-a). Evidence-based medicine is further defined in Texas Labor Code §401.011(18-a) as the use of 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.

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 division 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.

According to the ODG in evidence, the criteria for use of greater occipital nerve block includes:

- Indicated for refractory chronic migraine
- Not indicated for other headache types
- Bilateral blocks are not recommended over unilateral procedures

In this case, Claimant has failed to present sufficient evidence to contradict the decision of the IRO. Claimant's evidence was not persuasive to overcome the IRO determination. The testimony from Insurance Carrier's expert witness, Dr. E, was credible to show that the IRO decision was appropriate. Dr. E provided detailed and sound testimony indicating that nothing in Claimant's medical records presented to the IRO reviewer showed that Claimant had a prior positive response to bilateral greater and lesser occipital nerve blocks, and that Claimant's medical records did not reveal any diagnosis of "refractory chronic migraine" headaches as indicated per ODG for the requested treatment. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to bilateral greater & lesser occipital nerve blocks for headaches under fluoroscopy, (Healthcare Provider 3), for the compensable injury of (Date of Injury).

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 insurance coverage as a Self-Insured.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. The IRO determined that bilateral greater & lesser occipital nerve blocks for headaches under fluoroscopy, (Healthcare Provider 3), was not medically necessary for the compensable injury of (Date of 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 was admitted into evidence.
3. Claimant does not meet the requirements of the ODG for bilateral greater and lesser occipital nerve blocks for headaches under fluoroscopy, and Claimant failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
4. Bilateral greater and lesser occipital nerve blocks for headaches under fluoroscopy 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 of the Texas Department of Insurance, Division of Workers' Compensation.
3. The preponderance of the evidence is not contrary to the decision of the IRO that bilateral greater and lesser occipital nerve blocks for headaches under fluoroscopy is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to bilateral greater & lesser occipital nerve blocks for headaches under fluoroscopy, (Healthcare Provider 3), for the compensable injury of (Date of Injury).

ORDER

Insurance 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 **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

(NAME)
(ADDRESS)
(CITY, STATE, ZIPCODE)

Signed this 26th day of April, 2021.

Ana Thornton
Administrative Law Judge