

MEDICAL CONTESTED CASE HEARING 22002

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) determined that the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the Claimant/Petitioner is not entitled to a medial branch block at L2, L3, and L4.

STATEMENT OF THE CASE

On February 7, 2022, Kevin L. Henry, a DWC ALJ, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant/Petitioner is not entitled to a medial branch block at L2, L3, and L4?

PARTIES PRESENT

Claimant/Petitioner appeared and was assisted by RH, ombudsman.
Insurance Carrier/Respondent appeared and was represented by CF, attorney.

EVIDENCE PRESENTED

No witnesses testified.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibit: None.

Claimant/Petitioner's Exhibits: C-1 through C-8.

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

DISCUSSION

The evidence showed that Claimant/Petitioner sustained a compensable injury on (Date of Injury). The evidence further showed that Claimant/Petitioner had the job of maintaining the engines and pumps in the oilfield for Employer. Claimant/Petitioner sustained the injury while walking on a walkway made of old pallets that collapsed while Claimant/Petitioner was carrying a 100 pound load.

A request for preauthorization of a medial branch block at L2, L3, and L4 was submitted to Insurance Carrier. On August 26, 2021, the request was denied. Claimant appealed the denial. The subsequent utilization review agent again recommended that the requested medial branch blocks be denied. Claimant appealed Insurance Carrier's denial through the DWC IRO process. Independent Reviewers of Texas, the IRO, upheld the Insurance Carrier's denial. Claimant appealed the IRO decision to a contested case hearing in accordance with 28 Texas Labor Code §133.308.

The evidence also showed that Claimant/Petitioner had a previous selective nerve root block and reported relief short term. Claimant/Petitioner was examined by MN, ACNP, with LR, M.D., on July 8, 2021, and complained of low back and leg pain. Claimant/Petitioner continued to complain of pain in the low back and left leg during a follow-up examination, and Dr. R submitted another request for a medial branch block at L2, L3, and L4. In a notice of adverse determination dated July 14, 2021, the utilization review agent, LL, M.D., indicated the requested medial branch block at L2, L3, and L4 was not medically necessary in accordance with the Official Disability Guidelines (ODG). Dr. R submitted a request for reconsideration, and a second utilization review agent, HK, M.D., submitted a denial dated August 26, 2021, which indicated the requested treatment was not medically necessary in accordance with the ODG. Due to the previous denials, Dr. R requested a review by an IRO. The IRO reviewer upheld the previous denials, and Claimant/Petitioner appealed by requesting a medical contested case hearing.

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(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 Labor Code §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, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. 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 DWC has adopted treatment guidelines by 28 Texas Administrative Code (TAC) §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 28 TAC §133.308(s), a decision issued by an IRO is not considered an agency decision and neither the Texas Department of Insurance nor DWC are considered parties to an appeal. In a contested case hearing, 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 Claimant/Petitioner to meet his burden, he had to present a qualified expert medical opinion with reference to evidence-based medicine to show the preponderance of the evidence-based medical evidence is contrary to the decision issued by the IRO. Such evidence-based medical evidence was lacking in this case. As such, insufficient evidence-based medical evidence existed to explain that the requested medial branch block was health care reasonably required for the compensable injury. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to the requested treatment.

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/Petitioner was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance through American Home Assurance Company, Insurance Carrier.
 - D. On (Date of Injury), Claimant/Petitioner sustained a compensable injury.
2. Insurance Carrier/Respondent provided a single document stating the true corporate name of Insurance Carrier/Respondent and the name and street address of Insurance Carrier/Respondent's registered agent for service to Claimant/Petitioner. That document was admitted into evidence as Insurance Carrier/Respondent's Exhibit B.

3. The medial branch block at L2, L3, and L4 is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, DWC, 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/Petitioner is not entitled to a medial branch block at L2, L3, and L4.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant/Petitioner is not entitled to medial branch block at L2, L3, and L4.

ORDER

Insurance Carrier/Respondent is not liable for the benefits at issue in this hearing. Claimant/Petitioner 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 **AMERICAN HOME ASSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218**

Signed this 15th day of February 2022.

Kevin L. Henry
Administrative Law Judge