

**SOAH DOCKET NO. 453-04-2704.M2
TWCC MR NO. M2-04-0380-01**

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
EMPLOYERS GENERAL INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

— (Claimant) disputes the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission, TWCC) affirming the denial by Employers General Insurance Company (Carrier) of pre-authorization for bilateral L1-S1 lumbar facet nerve joint blocks. The Administrative Law Judge (ALJ) finds that pre-authorization should be ordered because the requested treatment is medically necessary to relieve the effects naturally resulting from Claimant's compensable injury to his back.

I. JURISDICTION, NOTICE, AND VENUE

The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Chapter 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

Notice of the hearing was sent to the parties on January 27, 2004. Notice and jurisdiction are not contested and are addressed in the Findings of Fact and Conclusions of Law set out below.

ALJ Sharon Cloninger convened the hearing February 24, 2004, in the William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Petitioner appeared via telephone and was assisted by Luz Loza, Commission ombudsman. Carrier was represented by Neal Moreland, its

director of TWCC Services. The hearing concluded and the record closed that same day.

II. BACKGROUND

Claimant incurred a compensable injury on ____, when he was backing down a scaffolding and hyper-extended his left knee. While recovering from the resulting knee surgery in November 2001, he began having back pain. A discogram performed on his lumbar spine on January 23, 2002, revealed the L5-S1 disc to have completely collapsed, with injury to the L3-4 and L4-5 levels.¹ He was diagnosed with herniated nucleus pulposus,² multiple spinal nerve root neuritis,³ and neuropathy.⁴

Treatment for Claimant's back injury has included steroid injections on December 14, 2001, and August 12, 2003, a spinal nerve root injection on February 28, 2002, and a rhizotomy⁵ on August 1, 2002. To cope with the chronic pain resulting from the injury, Claimant currently uses a morphine patch and muscle relaxants. He has used narcotics and hydrocodone in the past as well.

Claimant was seen by a surgeon, Walter Piskun, M.D., who determined that, if Claimant undergoes back surgery, a three-level fusion would be required. Because of the high risk of permanent paralysis associated with a three-level fusion, Dr. Piskun does not recommend surgery unless Claimant's condition degenerates to the point he is unable to walk.

Claimant's treating physician, B. J. Daneshfar, M.D., requested pre-authorization for the nerve blocks at issue in this matter on August 27, 2003. Carrier denied the request on September 2, 2003, and again on September 18, 2003, as not medically necessary, because nerve

¹ Claimant previously injured his back on ____, while shoveling snow at work. Following treatment for the ____ injury to his L5-S1 disc, he was able to resume his job duties with a manageable pain level until the current compensable injury occurred.

² The nucleus pulposus is an elastic pulpy mass lying in the center of each intervertebral fibrocartilage. *Merriam Webster's Medical Dictionary*, (1995), p. 468.

³ Neuritis is an inflammatory or degenerative lesion of a nerve marked especially by pain, sensory disturbances, and impaired or lost reflexes. *Id.* at 454.

⁴ Neuropathy is an abnormal and usually degenerative state of the nervous system or nerves. *Id.* at 457.

⁵ A rhizotomy is the operation of cutting the anterior or posterior spinal nerve roots. *Id.* at 602.

blocks administered this far out from the date of injury would not be likely to significantly decrease pain symptoms long-term, and Claimant would still be left to manage chronic pain. Claimant requested an appeal of Carrier's denial before the Commission's Medical Review Division, pursuant to 28 TAC § 134.600(g). The Commission referred the appeal request to an independent review organization (IRO), as permitted under 28 TAC § 133.308. On December 17, 2003, the IRO recommended non-authorization on the basis that the requested treatment is not medically necessary.⁶ On January 1, 2004, Claimant requested a hearing before SOAH.

III. DISCUSSION

A. Applicable Law

The only issue in this case is whether, by a preponderance of the evidence, the requested treatment is shown to be medically necessary. Medical necessity is defined at TEX. LABOR CODE ANN. § 408.021(a), which states:

- (a) 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 employee is specifically entitled to health care that:
 - (1) cures or relieves the effects naturally resulting from the compensable injury;
 - (2) promotes recovery; or
 - (3) enhances the ability of the employee to return to or retain employment.

Under 28 TAC § 148.21(h), the appealing party has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LABOR CODE ANN. § 413.031. Thus, Claimant, as the petitioner, must prove the requested treatment is reasonably required within the meaning of TEX. LABOR CODE ANN. § 408.021(a).

B. Evidence

⁶ The ALJ does not find the IRO decision to be helpful, because it relates to the _____ compensable injury to Claimant's back, and does not address the _____ compensable injury.

Claimant and Dr. Daneshfar testified. Claimant and Carrier each offered one document, both of which were admitted.

1. Claimant's testimony

Since his _____ injury, Claimant has been unable to work and has suffered constant pain, which at times is unbearable even with narcotics and pain medications. During these unmanageable periods of pain, spinal injections performed by Dr. Daneshfar reduce the intensity of the pain, if only for the short term.⁷ Without the injections, Claimant's back will spasm and he cannot walk or stand for days; he has gone as long as two or three days without sleeping, due to the pain. Claimant has used prescription medications for such a long time that he has twice had to break addictions with multiple other side effects. He is currently participating in mental health counseling regarding chronic pain and its effect on his mental well being. Surgery is too high risk to be an option to address Claimant's pain, since a three-level fusion would be irreversible and could possibly leave him paralyzed. Because there is no medical cure for Claimant's back injury, and pain management is his only option, Claimant believes Dr. Daneshfar's recommended treatment is medically necessary.

2. Dr. Daneshfar's testimony

Dr. Daneshfar testified that the requested treatment is medically necessary to give Claimant permanent or prolonged pain relief, to make Claimant more mobile, and also to give him an opportunity to improve his condition. He explained that when a facet nerve is irritated, it causes spasms in the muscles of the spine, which causes Claimant's back to "lock up" and push the joints together, resulting in more damage. He said sometimes Claimant's back spasms last all day and night.

He said the requested nerve blocks have a 90 percent probability of stopping the spasms and breaking the cycle, giving Claimant immediate relief and allowing him to undergo physical therapy and do range of motion exercises, which would give him an opportunity to improve. He said

⁷ Dr. Daneshfar treated Claimant for his _____ compensable back injury. He administered facet nerve joint blocks in April 1999 that relieved Claimant's back pain for weeks or months at a time. Claimant recovered and was able to return to work.

additional epidural steroid injections will not help Claimant, because they would not cause a complete response by Claimant's facets, which need to be treated directly via the requested nerve blocks. He said physical therapy would have to be optimally timed after the facet nerve blocks for the best results. He added that currently the amount of narcotics Claimant takes for his pain would prevent him from going to work.

Dr. Daneshfar disagrees with the IRO decision because the IRO physician confused the _____ injury with the current compensable injury.

IV. ANALYSIS

Claimant has met his burden of establishing that the requested treatment is medically necessary and that it should be pre-authorized. The requested treatment not only would relieve Claimant's chronic back pain, which resulted from his compensable injury, but could possibly allow him to undergo physical therapy that could lead to a long-term or permanent improvement in his condition. Claimant presented sufficient evidence to prove the requested treatment will cure or relieve the effects naturally resulting from his compensable injury. Thus, Claimant is entitled to pre-authorization of the bilateral L1-S1 lumbar facet nerve joint blocks pursuant to TEX. LABOR CODE ANN. § 408.021(a).

V. FINDINGS OF FACT

1. _____. (Claimant) suffered a compensable injury to his back on ____, when he fell from scaffolding.
2. Employers General Insurance Company (Carrier) was the insurance provider for Claimant's employer at the time of his injury.
3. B. J. Daneshfar, M.D., is Claimant's treating physician.
4. A discogram performed on Claimant's lumbar spine on January 23, 2002, revealed the L5-S1 disc to have completely collapsed, with injury to the L3-4 and L4-5 levels.
5. Claimant was diagnosed with herniated nucleus pulposus, multiple spinal nerve root neuritis, and neuropathy.
6. Bilateral L1-S1 lumbar facet nerve joint blocks would give Claimant immediate pain relief,

which could be prolonged or permanent; more mobility; and also have a 90 percent probability of breaking the spasm cycle in Claimant's back, which would give him an opportunity to participate in physical therapy and do range of motion exercises, that might improve his condition.

7. On August 27, 2003, Dr. Daneshfar requested pre-authorization from Carrier for Claimant to undergo bilateral facet nerve block injections at the L1-S1 levels of his back.
8. Carrier denied Claimant's request for pre-authorization on the basis that the treatment is not medically necessary.
9. Following Carrier's denial, Claimant filed a timely request with the Texas Workers' Compensation Commission (the Commission, TWCC) for medical dispute resolution.
10. Claimant's request was assigned to an independent review organization (IRO) by the Commission's Medical Review Division (MRD).
11. The IRO issued a decision December 17, 2003, affirming the denial of Dr. Daneshfar's request for pre-authorization.
12. On January 1, 2004, Claimant filed a timely request for hearing to contest the IRO decision.
13. Notice of the hearing was sent to the parties on January 27, 2004.
14. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
15. Administrative Law Judge Sharon Cloninger convened the hearing February 24, 2004, in the William Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Petitioner appeared via telephone and was assisted by Luz Loza, ombudsman. Carrier was represented by Neal Moreland, its director of TWCC services. The hearing concluded and the record closed that same day.

VI. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Chapter 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE

ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
5. Claimant met his burden of proving the requested treatment is medically necessary and reasonably required within the meaning of TEX. LAB. CODE ANN. § 408.021(a).
6. Based on the foregoing Findings of Fact and Conclusions of Law, the requested treatment should be pre-authorized.

ORDER

IT IS, THEREFORE, ORDERED that Employers General Insurance Company shall pay the reasonable costs of the bilateral L1-S1 lumbar facet nerve joint blocks requested by ___ for treatment of his back.

SIGNED March 8, 2004.

**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**