

**DOCKET NO. 453-04-3679.M2  
MRD NO. M2-04-0677-01**

—,	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
vs.	§	<b>OF</b>
	§	
<b>PACIFIC EMPLOYERS INSURANCE</b>	§	
<b>COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

The issue involved is whether Pacific Employers Insurance Company (Carrier) correctly denied preauthorization for eight botox injections with EMG guidance for Claimant (Claimant). Carrier denied the botox injections as not medically necessary. The Independent Review Organization (IRO) also found that the botox injections were not medically necessary. The Administrative Law Judge (ALJ) finds that the botox injections are not medically necessary and should not be preauthorized for Claimant.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On April 21, 2004, ALJ Michael J. O'Malley conducted the hearing on the merits at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Claims Adjuster F. Javier Gonzalez represented Carrier, and Juan Mireles, Ombudsmen for the Texas Workers' Compensation Commission, assisted Claimant. The parties did not contest jurisdiction or notice; therefore, those issues are addressed in the findings of fact and conclusions of law without discussion here. The ALJ closed the record on April 21, 2004.

**II. BACKGROUND**

On \_\_\_\_, Claimant developed lower back pain after performing heavy lifting. Claimant was diagnosed with chronic low back pain with an annular tear at L 4-5 and L 5-S 1 and a herniated disc at L 5-S 1. Claimant has received extensive treatment for his pain, including acupuncture and epidural steroid injections, but none of these treatments have been successful in eliminating his pain. Surgery has been recommended for Claimant, but he has declined surgery. Claimant takes pain medications, such as Hydrocodone, on a daily basis to relieve his pain.

**III. PARTIES' POSITIONS**

Claimant testified on his own behalf and offered certain medical documents in evidence to support his position. Claimant testified that he needed the botox injections for his back pain. He

further testified that he has received epidural steroid injections and acupuncture, and participated in aquatic therapy without permanent relief. Claimant stated that the botox injections have the potential to be effective because his doctor has successfully treated other patients with botox injections.<sup>1</sup> Claimant has not worked since the injury and has delayed surgery hoping a less intrusive treatment might relieve his pain.

Most of Claimant's medical documents are from his treating doctor, A. T. Carrasco, M.D. Dr. Carrasco recommends the botox injections to treat Claimant's myofascial pain, improve his pain and suffering, and allow him to be more functional. Dr. Carrasco's reports indicate that he has effectively treated several patients with botox injections. His reports also state that botox injections have been customary in Texas for the last ten years, although he admits that they have not been approved by the Federal Drug Administration (FDA).

Carrier did not call any witnesses to testify but did have certain medical documents admitted in evidence to support its position that the botox injections are not medically necessary. First, Carrier submitted the peer reviews of Marcus Villarreal, M.D., and T. Wilson, M.D. In his peer review, Dr. Villarreal stated that there was insufficient documentation demonstrating the benefit of botox injections in the treatment of back pain. He further stated that botox injections are unproven at this time. He concluded that Claimant would not benefit from botox injections almost five years after the injury. Dr. Wilson reached a similar conclusion on November 17, 2003. Finally, on April 7, 2004, Dr. Villarreal reported, for purpose of this hearing, that there is currently insufficient scientific evidence on the effectiveness of botox injections in the treatment of back pain.

#### IV. ANALYSIS

Claimant failed to meet his burden of proof that eight botox injections with EMG guidance are medically necessary to treat his chronic back pain; therefore, the ALJ denies preauthorization for them for the following reasons. First, there is no scientific evidence that botox injections are effective in the treatment of back pain. Although Dr. Carrasco has treated patients with botox injections, there was no evidence on the long-term effect of these injections. Furthermore, the FDA has not approved botox injections for treatment of back pain. Second, Claimant suffers from chronic back pain, and the treatments he has undergone have provided only temporary relief.<sup>2</sup> For example, he has received epidural injections, physical therapy, and acupuncture with minimal relief of his back pain. Because Claimant has a chronic condition, he needs more than temporary relief.<sup>3</sup> Finally, surgery has been recommended for Claimant's chronic back pain, but he has declined surgery as an option, hoping that a less intrusive treatment might provide the permanent relief he is seeking.

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<sup>1</sup> Claimant's treating doctor did not testify; therefore, there was no medical testimony on the efficacy of botox injections.

<sup>2</sup> There was no credible evidence that botox injections provided temporary relief of back pain.

<sup>3</sup> It is not medically necessary to provide every possible treatment, given that Claimant's condition has continued for five years, all treatments thus far have provided only minimal relief, and surgery has been recommended for Claimant's condition.

However, because Claimant's condition is chronic, surgery appears to be the only alternative to provide the long-term relief desired by Claimant.

## **V. FINDINGS OF FACT**

1. On \_\_\_\_, Claimant developed a compensable workers' compensation back injury.
2. Claimant has been diagnosed with chronic low back with an annular tear at L 4-5 and L 5-S 1 and a herniated disc at L 5-S 1.
3. Claimant has declined surgery on his lower back to relieve his chronic pain.
4. Claimant has received extensive treatment for his pain, including epidural steroid injections, acupuncture, and aquatic therapy; however, none of these treatments have been successful in eliminating Claimant's pain.
5. Claimant takes pain medication on a daily basis for his pain.
6. Claimant has not returned to work since his injury.
7. Claimant's treating doctor, A. T. Carrasco, M.D., recommends eight botox injections with EMG guidance to treat Claimant's pain.
8. Pacific Employers Insurance Company (Carrier) denied preauthorization for the eight botox injections with EMG guidance as not medically necessary.
9. On January 20, 2004, the Independent Review Organization (IRO) denied preauthorization for the eight botox injections as not medically necessary.
10. On February 11, 2004, Claimant appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
11. The Commission issued the notice of hearing on March 15, 2004. The hearing notice informed the parties the matters to be determined, the right to appear and be represented, the date, time, and place of the hearing, and the statutes and rules involved.
12. The hearing was held on April 21, 2004, and the record closed that same day.
13. Botox injections have not been approved by the Federal Drug Administration in the treatment of back pain.
14. The efficacy of botox injections in the treatment of back pain is unproven.
15. The botox injections would not provide long-term benefits to Claimant five years after his injury.

## VI. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Claimant had the burden of proof in this case pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
5. Claimant did not prove that eight botox injections with EMG guidance were medically necessary to treat his chronic lower back pain.
6. Claimant's request for preauthorization for the eight botox injections with EMG guidance should be denied.

### ORDER

IT IS, THEREFORE, ORDERED that preauthorization for eight botox injections with EMG guidance is denied.

**SIGNED this 4<sup>th</sup> day of May, 2004.**

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**MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**