

____, Petitioner	§	BEFORE THE STATE OFFICE
	§	
vs.	§	
	§	OF
LIBERTY MUTUAL FIRE	§	
INSURANCE COMPANY, Respondent	§	
	§	ADMINISTRATIVE HEARING

**DECISION AND ORDER**

The issue involved is whether Liberty Mutual Fire Insurance Company (Carrier) correctly denied preauthorization for eight botox injections 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 March 9, 2006, ALJ Stephen J. Pacey conducted the hearing on the merits at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Kevin Franta, attorney, represented Carrier, and Anthony Walker, Ombudsman 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. After receipt of written closing arguments, the ALJ closed the record on March 27, 2006.

**II. BACKGROUND**

On \_\_\_\_, Claimant injured his back while he was lifting and rolling heavy cylinder heads. On \_\_\_\_, HealthSouth initially diagnosed Claimant with osteoarthritis for which he had previously had therapy. Claimant underwent an Intradiscal Electro Thermal (IDET) procedure, physical therapy, and work hardening but failed to return to work. Arnulfo Carrasco, M.D., began treating Claimant for intermittent pain. On December 18, 2003, Dr. Carrasco reported that Claimant has an occasional

flare up of pain especially when he failed to perform his exercises. Dr. Carrasco concluded that when Claimant performs his exercises, his pain was fairly well controlled.<sup>1</sup> In April of 2004, Claimant's back pain increased. Dr. Carrasco received preauthorization to perform eight botox injections on Claimant. These injections were performed August 2, 2006. Carrier denied a May 2, 2005 preauthorization request for another set of botox injections, and Claimant appealed Carrier's denial of Claimant's request for botox injections preauthorization.

### **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 pain in his gluteal region and back. According to Claimant, the effects of the first injections lasted for nine or ten months. Claimant said the injections improved his sleeping, decreased his medication, and enabled him to better perform activities of daily living. Claimant asserted that his visits to the doctor decreased from one a month to one every three months

Carrier offered certain medical documents and the testimony of Neal Blauzvern, D.O. Carrier relied on the independent peer review of Lisa Gill, D.O.,<sup>2</sup> and Dr. Blauzvern's testimony; those doctors found that Claimant's symptoms are related to the pre-existing spondylolistheses and not his work injury. Dr. Blauzvern testified, and Dr. Gill reported, that botox injections used in this manner are not approved by the FDA for Claimant's requested procedure. Dr. Blauzvern further testified that botox used in this manner is not reimbursed by Medicare or any other insurance. Dr. Gill's review further reflects that medical references report that the use of botox has little support in the literature and is not considered the standard of care for lower back pain.

Carrier asserted that Claimant's work related injury has resolved. Carrier concluded that Claimant's pain is intermittent and the requested botox injections are neither supported by the medical literature, nor approved by the FDA. Also insufficient clinical trigger point injections were performed to justify any necessity of the injections

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<sup>1</sup> Respondent's Exhibit 1, at page 149.

<sup>2</sup> Respondent's Exhibit 1, at pages 166-169.

#### IV. ANALYSIS

Claimant failed to meet his burden of proof that eight botox injections are medically necessary to treat his chronic back pain; therefore, the ALJ denies botox injections preauthorization for the following reasons. There is no scientific evidence that botox injections are effective in the treatment of lower back pain. Although Claimant testified that such treatment helped his symptoms in the past, there was no evidence of the long-term effect of botox injections. Claimant claimed that the previous injections relieved his symptoms for nine or ten months, but Dr. Carrasco's records indicate that Claimant's symptoms returned as early as five months after the previous injections.<sup>3</sup> Furthermore, neither the FDA nor Medicare have approved botox injections for the treatment of back pain. Although Claimant suffers from chronic back pain, his flare-ups are intermittent, and botox injections, at best, offer only temporary relief.

#### V. FINDINGS OF FACT

1. On \_\_\_\_, Claimant developed a compensable workers' compensation back injury.
2. Claimant has been diagnosed with pre-existing degenerative conditions including spondylolistheses of the lumbar spine.
3. At the time of his injury, Liberty Mutual Fire Insurance Company (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
4. Claimant began receiving treatment from Arnulfo Carrasco M.D. on October 25, 2000, and has treated intermittently with Dr. Carrasco since that date.
5. Claimant has received extensive treatment for his pain, including an IDET procedure physical therapy, and a work hardening program.
6. Claimant's back pain occasionally flares up but is generally well controlled by exercise, heat pads, and medication.
7. Claimant has not returned to work since his injury.
8. On May 2, 2005, Claimant's treating doctor, A. T. Carrasco, M.D., recommended eight botox injections to treat Claimant's pain.
9. Carrier denied preauthorization for the eight botox injections as not medically necessary.
10. On July 18, 2005, the Independent Review Organization (IRO) denied preauthorization for the eight botox injections as not medically necessary.
11. On July 28, 2005, Claimant appealed the IRO's decision and requested a hearing before the

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<sup>3</sup> Petitioner's Exhibit No. 1 at page 14.

12. The Commission issued the notice of hearing on August 29, 2005. 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.
13. The hearing was held on March 9, 2006, and the record closed March 27, 2006.
14. Botox injections have not been approved by the Federal Drug Administration or Medicare for the treatment of back pain.
15. The efficacy of botox injections for the treatment of back pain is unproven.
16. The botox injections would not provide long-term benefits to Claimant six 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 were medically necessary to treat his chronic lower back pain.
6. Claimant's request for preauthorization for the eight botox injections should be denied.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that preauthorization for eight botox injections is denied.

**SIGNED April 6, 2006.**

**STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**