

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A Contested Case Hearing was held on February 2, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1 for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by ombudsman, JR. Carrier appeared and was represented by RL, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his cervical spine, thoracic spine and lumbar spine on _____. The medical records indicate that the Claimant underwent an anterior cervical discectomy fusion at C4 through C7. An MRI of the lumbar spine showed disc desiccation and disc bulging at L3, L4, L5 and S1. Claimant has been diagnosed with multilevel lumbar spondylosis. Claimant testified that he lives with chronic back pain and desires relief from this condition.

On July 12, 2006, Dr. B, M.D. performed L4 through S1 transforaminal epidural steroid injections (ESIs) on the right. On August 25, 2006, and September 27, 2006, Dr. B performed lumbar facet injections at L3 through S1. Claimant testified that these injections afforded him temporary relief from pain.

On July 17, 2009, Dr. B, requested bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1. The carrier denied this request and an IRO was requested to address this denial. The IRO reviewer, a board certified orthopedic surgeon, determined that the request for the bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1 did not meet the criteria as outlined in the ODG.

Texas Labor Code Section 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 Section 401.011 (22a) 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 Texas Labor Code Section 401.011 (18a) 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 Section 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 Section 413.017(1).

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 Official Disability Guidelines (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 (t), "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 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."

Pursuant to the ODG, the criteria for the requested facet joint diagnostic blocks (injections) are as follows:

“Criteria for the use of diagnostic blocks for facet “mediated” pain:

Clinical presentation should be consistent with facet joint pain, signs & symptoms.

1. One set of diagnostic medial branch blocks is required with a response of $\geq 70\%$. The pain response should be approximately 2 hours for Lidocaine.
2. Limited to patients with low-back pain that is non-radicular and at no more than two levels bilaterally.
3. There is documentation of failure of conservative treatment (including home exercise, PT and NSAIDs) prior to the procedure for at least 4-6 weeks.
4. No more than 2 facet joint levels are injected in one session (see above for medial branch block levels).
5. Recommended volume of no more than 0.5 cc of injectate is given to each joint.
6. No pain medication from home should be taken for at least 4 hours prior to the diagnostic block and for 4 to 6 hours afterward.
7. Opioids should not be given as a “sedative” during the procedure.
8. The use of IV sedation (including other agents such as midazolam) may be grounds to negate the results of a diagnostic block, and should only be given in cases of extreme anxiety.
9. The patient should document pain relief with an instrument such as a VAS scale, emphasizing the importance of recording the maximum pain relief and maximum duration of pain. The patient should also keep medication use and activity logs to support subjective reports of better pain control.

10. Diagnostic facet blocks should not be performed in patients in whom a surgical procedure is anticipated. (Resnick, 2005)
11. Diagnostic facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level.”

Facet joint injections, multiple series, are referred to in the ODG as follows:

“Therapeutic injections: With respect to facet joint intra-articular therapeutic injections, no more than one therapeutic intra-articular block is suggested. If successful (pain relief of at least 50% for a duration of at least 6 weeks), the recommendation is to proceed to a medial branch diagnostic block and subsequent neurotomy (if the medial branch block is positive). See Facet joint intra-articular injections (therapeutic blocks). There is no peer-reviewed literature to support a “series” of therapeutic fact blocks.”

Recommend no more than one set of medial branch diagnostic blocks prior to facet neurotomy, if neurotomy is chosen as an option for treatment (a procedure that is still considered “under study”). Diagnostic blocks may be performed with the anticipation that if successful, treatment may proceed to facet neurotomy at the diagnosed levels. Current research indicates that a minimum of one diagnostic block be performed prior to a neurotomy, and that this be a medial branch block (MBB). Although it is suggested that MBBs and intra-articular blocks appear to provide comparable diagnostic information, the results of placebo-controlled trials of neurotomy found better predictive effect with diagnostic MBBs. In addition, the same nerves are tested with the MBB as are treated with the neurotomy. The use of a confirmatory block has been strongly suggested due to the high rate of false positives with single blocks (range of 25% to 40%) but this does not appear to be cost effective or to prevent the incidence of false positive response to the neurotomy procedure itself.

The Claimant failed to present any persuasive evidence that Claimant has failed conservative treatment and that the first and second round of facet injections at the requested levels produced significant initial relief as required by the ODG. No pain diary was in evidence to show whether the initial pain relief was over 70% or whether the threshold of 50% pain relief for at least six weeks was met. The ODG recommends only two levels receive facet injections at one time. Petitioner is requesting four levels. The ODG recommends limiting these procedure to patients with low-back pain that is non-radicular and at no more than two levels bilaterally. Dr. B has requested to inject 1 cc of injectate at each joint rather than the ODG recommended dose of .5 cc of injectate.

The Claimant failed to present evidence-based medicine to overcome the IRO’s decision regarding the requested procedure of a third lumbar facet block at L3 through S1. Therefore, Claimant has not met his burden of proof to show that the preponderance of evidence-based medicine was contrary to the IRO decision.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

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 _____, Claimant was the employee of (Employer).
 - C. Claimant sustained a compensable lumbar injury on _____.
 - D. The Independent Review Organization determined that Claimant is not entitled to bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The IRO decision was based on the ODG and concluded that the requested bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1 are not medically reasonable and necessary for the compensable injury of _____.
4. Claimant failed to provide any evidence based medicine contrary to the IRO's determination that the requested bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1 are not medically reasonable and necessary for the compensable injury of _____.
5. The requested bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1 is not health care reasonably required for the compensable injury of _____.

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.
3. The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5, and S1 for the compensable injury of _____.

DECISION

Claimant is not entitled to bilateral diagnostic lumbar facet medial branch injections at L3, L4, L5 and S1 for the compensable injury of _____.

ORDER

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 **TPCIGA FOR PETROSURANCE CASUALTY** and the name and address of its registered agent for service of process is:

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET RD
AUSTIN, TX 78758**

Signed this 10th day of February, 2010.

David A. Northup
Hearing Officer