

MEDICAL CONTESTED CASE HEARING NO. 11155
M4-10-5237-01

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 March 11, 2011, May 3, 2011, and June 14, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of Medical Fee Dispute Resolution Findings And Decision that the requester has not established that reimbursement is due?

PARTIES PRESENT

Petitioner (Hereinafter Claimant) appeared and was represented by ombudsman, at all proceedings. Respondent (Hereinafter Carrier) failed to appear for the March 11, 2011 hearing but responded to a 10-day letter stating it had not received notice of that hearing. Carrier appeared at the two subsequent hearings and was represented by CC, III, attorney.

BACKGROUND INFORMATION

The Claimant testified that she was a Financial Counselor for the Employer with a hire date of March 13, 2006. On (Date of Injury) she sustained a compensable injury when she stepped onto un-even pavement and broke her right foot and twisted her spine. The Claimant has received medical treatment for her injuries.

On December 5, 2006, the Claimant presented to Dr. P, the doctor appointed by the Division to serve as the designated doctor to determine the Claimant's date of maximum medical improvement and impairment rating. Diagnosing the Claimant with lumbar strain/sprain, right foot fifth metatarsal fracture, and chronic low back pain, Dr. P found the Claimant at maximum medical improvement with a 0% impairment rating. On April 10, 2008 the Claimant returned to Dr. P so that he could determine the extent of the compensable injury. Dr. P stated the compensable injury extended to a lumbar sprain/strain pattern and right foot fifth metatarsal fracture only.

On May 11, 2010, the Claimant had right ankle reconstruction surgery performed by Dr. B. The operative report contains no reference to the right foot fifth metatarsal fracture. The Claimant stated the surgery was paid for through Medicare and private insurance. The Claimant then had many out of pocket expenses for medication, durable medical equipment, and therapy. The Claimant stated she is seeking reimbursement in the amount of \$619.31 because she had recently had to purchase orthotic shoes. The Claimant stated she requested reimbursement for those out of pocket expenses with MM, the adjustor for the Carrier, but they were denied. There were no

fax confirmations of the Claimant's request for reimbursement. The Claimant appealed the denial to the Division's Medical Fee Dispute Section.

In a January 21, 2011 Medical Fee Dispute Resolution Findings And Decision the Claimant's requests for reimbursement, in the amount of \$453.16, were denied. Noting that a request for reimbursement should be legible and include documentation or evidence of the amount the injured worked paid the health care provider, as well as the Carrier's or health care provider's denial of reimbursement, the Medical Fee Dispute Findings And Decision stated that the Claimant's initial request for reimbursement was not supported by documentation and that there were no fax confirmations that the requests for reconsideration were made.

On December 11, 2003, RR, the Executive Director of the Texas Workers' Compensation Commission issued Advisory 2003-21. In part, the Advisory states:

Parties requesting medical dispute resolution should ensure that they abide by the statute and rule references outlined above. The Commission's Medical Dispute Resolution Section has indicated that parties filing a dispute have the burden of proof to support their position for advocating additional reimbursement. The burden of proof includes production of sufficient evidence to support that the reimbursement requested is in accordance with the factors listed in §413.011(b) of the Texas Workers Compensation Act.

According to the Medical Fee Dispute Resolution Findings And Decision the Claimant failed to provide documentation that supported an initial request for reimbursement.

The Claimant testified that the surgery of May 11, 2010 was not for the fracture of the right foot fifth metatarsal. The Claimant stated that she did send the request for reimbursement to the adjuster, MM. Further, she stated she did pick up a form from the Texas Department of Insurance, Division of Workers' Compensation and sent it to Medical Fee Dispute Resolution Section, but did not state what documentation was included with the form. However, in order to obtain reimbursement from the Carrier for fees expended on health care, the health care at issue must have been provided to treat Claimant's compensable injury. The Claimant's testimony corroborated the operative report that the surgery performed on May 11, 2010 was not for the fractured right foot fifth metatarsal. Therefore, the requests for reimbursement for the after surgery out of pocket expenses for medication, durable medical equipment, and therapy, are not related to treatment for the Claimant's compensable injury.

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 (Date of Injury), Claimant was the employee of (Employer).

C. On (Date of Injury), the Employer provided workers' compensation insurance with Old Republic Insurance Company.

D. The Claimant sustained a compensable injury on (Date of Injury).

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 Medical Fee Dispute Resolution Findings And Decision determined that the Claimant was not entitled to reimbursement.
4. The Claimant did not produce sufficient evidence to support that she is entitled to the reimbursement at issue in accordance with the Act and Rules.

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 Medical Fee Dispute Resolution Findings And Decision that the requester has not established that reimbursement is due.

DECISION

The preponderance of the evidence is not contrary to the decision of Medical Fee Dispute Resolution Findings And Decision that the requester had not established that reimbursement is due.

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 **OLD REPUBLIC INSURANCE 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 20th day of June, 2011.

David Paul Weston
Hearing Officer