

**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.

**ISSUE**

A contested case hearing was held on November 12, 2009, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution decision that Claimant is not entitled to reimbursement of \$850.00 for services rendered between November 19, 2007 through December 2007 for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by AT, ombudsman.  
Respondent/Carrier appeared and was represented by RT, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable lower extremity injury on \_\_\_\_\_. A case worker for the Carrier inspected Claimant's house and recommended modifications to a bathroom and a ramp to one outside doorway. A local contractor was approved by the Carrier to make the modifications recommended by the case worker. Claimant paid \$750.00 directly to the local contractor on November 16, 2007 so that he could buy materials and complete the project in a timely manner. Claimant also paid \$100.00 to a subcontractor in order to get fixtures installed in the bathroom.

Claimant sought reimbursement from the Carrier by an undated letter marked received by the Carrier on December 15, 2008. The Carrier denied the request for reimbursement on its own internal form. The reasons listed were "not compensable" and "charge unrelated to compensable injury". No further reason or explanation was provided.

Claimant sought the assistance of the Office of Injured Employee Counsel in March 2009. Following contact with the Carrier's claims adjuster, the reimbursement issue was not resolved and Claimant filed a request for Medical Fee Dispute Resolution (MFDR) that was stamped received by MFDR on April 13, 2009. The processing of the Medical Fee Dispute was delayed in MFDR for unknown reasons. MFDR redocketed this dispute on August 6, 2009 and requested the Carrier provide a response to the fee dispute. The Carrier provided a response dated August 14, 2009 and raised as a defense for the first time that the fee dispute by Claimant was not filed within one year as set out by Division Rule 133.307(c)(1).

On September 3, 2009 MFDR issued its decision finding the dispute was untimely filed and "therefore, this dispute cannot be reviewed and reimbursement cannot be recommended." I assume this was just a poor choice of words by the Medical Review Auditor. The dispute can and is being reviewed.

I find that the Carrier denied the medical fee reimbursement request for two reasons. First, because there was no compensable injury and second because the charge was unrelated to the compensable injury. No further explanation was given. The Carrier is bound by the reasons and defense given at the time it denies the medical fee reimbursement as per Division Rule 133.307(d)(2)(B). Any new denial reasons or defense raised by the Carrier shall not be considered in the medical review process. Therefore, the defense raised by the Carrier in its response to fee dispute process should not have been considered in the MFDR decision. The preponderance of the evidence is contrary to the Medical Fee Dispute Resolution decision that Claimant is not entitled to reimbursement of \$850.00 for services rendered between November 19, 2007 through December 2007 for the compensable injury of \_\_\_\_\_.

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).
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 Carrier denied the medical fee reimbursement request because there was no compensable injury and the medical fee was unrelated to a compensable injury.
4. The MFDR decision was based on a defense raised by the Carrier by the first time during the medical fee dispute process and was not based on either of the defenses provided at the time the medical fee reimbursement was denied.
5. Claimant does have a compensable lower extremity injury and the medical fee reimbursement request was related to 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 contrary to the Medical Fee Dispute Resolution decision that Claimant is not entitled to reimbursement of \$850.00 for services rendered between November 19, 2007 through December 2007 for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is entitled to reimbursement for \$850.00 for services rendered between November 19, 2007 through December 2007 for the compensable injury of \_\_\_\_\_.

**ORDER**

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** is the name and address of its registered agent for service of process is:

**JONATHON D. BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR.  
STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701**

For service by mail, the address is:

**JONATHON BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777**

Signed this 16th day of November, 2009.

Donald E. Woods  
Hearing Officer