

**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 11, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Medical Fee Dispute Resolution Findings and Decision that Dr. D, M.D. is not entitled to receive \$825.00 for services rendered on March 29, 2007?

**PARTIES PRESENT**

Petitioner, Dr. D, M. D., appeared without representation.  
Respondent/Carrier appeared and was represented by BQ, attorney.

**BACKGROUND INFORMATION**

Petitioner, Dr. D, M.D., was assigned by the Division as designated doctor to evaluate the claimant and determine whether the claimant had reached maximum medical improvement, and if so, what the impairment rating would be, the claimant's ability to return to work and the extent of the claimant's injury. Dr. D performed these services on 3/29/07 and submitted his request for payment with the carrier on 4/3/07 utilizing the American Medical Association Physician's Current Procedural Terminology (CPT) codes 99456 NM \$350.00; 99456 RE \$350.00 and 96118 NM \$125.00. As no response was had, Dr. D again resubmitted another request with the addition of a CPT code of 99456 Re-59 \$350.00 on 6/8/07. Dr. D was eventually paid \$350.00 for CPT code 99456 NM. Dr. D again requested payment for the balance of \$825.00 on 8/2/07 without success. Dr. D was then involved in a serious motor vehicle accident in which he was hospitalized and unable to perform his work duties from 11/7/07 through 4/1/08. Dr. D then returned to work in (County), Texas until Hurricane Ike struck the Texas coast in September 2008. Dr. D eventually filed his DWC 60 appeal form with the Division on 2/19/09 requesting medical fee dispute resolution of \$825.00 for his services rendered on 3/29/07. The carrier contended that petitioner did not timely file his request for appeal with the Division within one year from the date of service and has waived his right to appeal.

The Division's Rule 133.307 (c) (1) (A) states in part,

"A request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later that one year after the date (s) of service in dispute."

Subparagraph (B) states in part,

"A request may be filed later than one year after the date(s) of service if:

(i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability;"

Petitioner contended that Rule 133.307 (c) (1) (A) does not apply in this case and relied upon subparagraph (B) of this rule arguing that as he was assigned to determine the extent of injury, subparagraph (B) should apply. Although the Division assigned Dr. D to determine the claimant's extent of injury, nothing in the evidence showed that a dispute had arisen in this regard, that a benefit review conference was requested or undertaken or that a contested case hearing was requested or had as to compensability, extent of injury or liability.

Alternatively, Petitioner argued that good cause existed due to his unfortunate circumstance on 11/7/07 that lasted through 4/1/08 and due to Hurricane Ike based on Commissioner's Bulletin #B-0070-08, TAC 418.016 of the Texas Government Code suspending all rules and regulations from 9/7/08 through 4/5/09. Further, Petitioner contended that the calculation of one year should exclude weekends and holidays. The pertinent rule in dispute does not utilize the term "business days" nor does it allude to the exclusion of week ends. As the date of service in dispute is 3/29/07, it is determined that one year from this date would be Saturday 3/29/08. Even if this date is extended to the next working (business) day, this date would be 3/31/08, which falls during the tail end time period of Dr. D's recovery from his accident. A review of Rule 133.307 does not provide for a good cause clause or exception such as the one presented by Petitioner in the case at hand. As such, Petitioner was required to have filed his request for appeal no later than one year from the date of service, which Petitioner failed to do. Because the calculation of one year is determined to be prior to the occurrence of Hurricane Ike, the application of the Commissioner's Bulletin #B-0070-08 needs not be addressed.

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. The claimant sustained a compensable injury on \_\_\_\_\_.
2. Carrier delivered to Provider 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. On 12/2/09 the Medical Fee Dispute Resolution Findings and Decision determined that Dr. D, M.D. failed to timely file a request for dispute per 28 TAC §133.307 (c) (1) (A)

for fees of \$825.00 as reimbursement for health care services rendered on 3/29/07 for the compensable injury of \_\_\_\_\_.

4. On 2/19/09, the Division received Petitioner's Medical Fee Dispute Resolution DWC-60 requesting an appeal of the carrier's denial of \$825.00 for services rendered on 3/29/07.
5. Petitioner's request for medical dispute resolution with the Division was not filed within one year from the date of service of 3/29/07.

### **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. Because Petitioner failed to timely file a request for dispute resolution regarding Carrier's denial of payment for services rendered on March 29, 2007, the preponderance of the evidence is not contrary to the Medical Fee Dispute Resolution Findings and Decision that Dr. D, M.D. is not entitled to receive \$725.00 for those services.

### **DECISION**

Because Petitioner failed to timely file a request for dispute resolution regarding Carrier's denial of payment for services rendered on March 29, 2007, the preponderance of the evidence is not contrary to the Medical Fee Dispute Resolution Findings and Decision that Dr. D, M.D. is not entitled to receive \$725.00 for those services.

### **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 **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY d/b/a  
CSC-LAWYERS INCORPORATIONG SERVICE COMPANY  
701 BRAZOS STREET #1050  
AUSTIN, TEXAS 78701**

Signed this 12th day of February, 2010.

Virginia Rodríguez-Gómez  
Hearing Officer