

MEDICAL CONTESTED CASE HEARING NO 12052
M4-11-2062-01

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.

ISSUE

A benefit contested case hearing was held on December 7, 2011 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 JC, M.D. is not entitled to \$524.02 for services rendered as designated doctor on (Date of Injury)?

PARTIES PRESENT

Petitioner/Provider appeared by telephone and was represented by PL, lay person. Respondent/Carrier appeared by telephone and was represented by MG, attorney. Claimant did not appear and his attendance was excused.

BACKGROUND

On September 24, 2010, Carrier filed a DWC-032 requesting the appointment of a designated doctor to determine maximum medical improvement (MMI) and impairment rating. On October 4, 2010, the Division appointed Dr. JC as designated doctor to determine MMI and impairment rating and scheduled the examination for (Date of Injury) at 12:30 p.m. On October 13, 2010, Carrier faxed a request to the Division to cancel the designated doctor appointment set for (Date of Injury) with Dr. C and this request was received by the Division on October 14, 2010. The Division contacted the Claimant's attorney, DG, on October 15, 2010 inquiring as to whether he agreed with the request to cancel the designated doctor appointment. On October 18, 2010, Mr. G agreed to cancel the designated doctor appointment and the request was approved by the Division on October 20, 2010. The approval to cancel the designated doctor examination was processed by the (City) Office on October 21, 2010 and mailed to the parties and the designated doctor. In addition to being mailed to the doctor the day before the examination was to take place, it was sent to an incorrect address. No fax or telephone call was placed to the doctor to cancel the appointment. It is undisputed that the doctor did not receive notice of the cancellation prior to the (Date of Injury) appointment.

Although the parties requested cancelation of the appointment, the Claimant presented for the examination scheduled on (Date of Injury). Dr. C examined the Claimant on (Date of Injury), submitted his report and properly tendered a bill to the Carrier for payment for said services. Carrier denied payment on the basis that the examination had been canceled. Dr. C then requested medical fee dispute resolution. On September 20, 2011, the medical fee dispute resolution officer (MFDR) issued an order denying payment. The MFDR officer determined that the parties had requested to cancel the designated doctor appointment as of October 21, 2010 and that the DWC Laredo office formally canceled the evaluation. Provider, Dr. C, appealed the decision of MFDR to a Medical Contested Case Hearing.

Pursuant to Texas Labor Code Ann. §408.0041 (a), at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about:

- (1) the impairment caused by the compensable injury;
- (2) the attainment of maximum medical improvement;
- (3) the extent of the employee's compensable injury;
- (4) whether the injured employee's disability is a direct result of the work-related injury;
- (5) the ability of the employee to return to work; or
- (6) issues similar to those described by Subdivisions (1)-(5).

Carrier requested a designated doctor by appointed to determine MMI and impairment rating pursuant to §408.0041(a). The Division selected Dr. C and scheduled an examination pursuant to the Carrier's request. Texas Labor Code Ann. §408.0041 (h) states that the insurance carrier shall pay for:

- (1) an examination required under Subsection (a) or (f); and
- (2) the reasonable expenses incident to the employee in submitting to the examination.

Carrier argued that, since the parties agreed to cancel the designated doctor examination and the Division approved the cancelation of the examination prior to the examination being conducted, there would be no standing order by the Division for the examination; therefore, the Carrier would be relieved of liability for payment for the examination that took place subsequent to the cancelation. However, the facts of this case are that there was an order for a designated doctor appointment, the cancelation of that appointment was not received by the doctor prior to the examination, the Claimant attended the appointment, the doctor performed the examination as ordered by the Division and the doctor properly billed for the services that were performed as a result of the order from the Division. Carrier also raised the questions of why the Division did not fax or call the doctor to cancel the appointment instead of mailing the notice and why the Claimant presented for the examination even though his attorney had agreed that the exam be canceled. While those are legitimate questions, the fact is that the Petitioner/Provider was appointed under the authority of subsection (a)(6) of §408.0041 and should be paid by Carrier for the examination pursuant to §408.0041 (h). Therefore, Carrier is liable for payment.

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) Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On September 3, 2008, Claimant was the employee of (Employer), employer.
 - C. The Medical Fee Dispute Resolution Officer determined that Petitioner/Provider is not entitled to \$524.02 for the designated doctor's examination performed on (Date of Injury).
2. Carrier delivered to Petitioner/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. Dr. JC was appointed by the Division to serve as its designated doctor to determine MMI and impairment rating in accordance with Texas Labor Code §408.0041(a).
4. On (Date of Injury), Dr. C performed a designated doctor examination in accordance with Texas Labor Code §408.0041.
5. Dr. C's services dated (Date of Injury) were properly billed under CPT code 99456-WP-W5 and additional testing under CPT code 95851.
6. On October 13, 2010, the Carrier requested that the Division cancel the designated doctor appointment scheduled for (Date of Injury).
7. On October 18, 2010, the Claimant's attorney agreed with the request to cancel the designated doctor appointment scheduled for (Date of Injury).
8. The request to cancel the (Date of Injury) designated doctor evaluation was mailed by the Division on October 21, 2010.
9. The Division's order to cancel the examination and was not received by Dr. C prior to the appointment on (Date of Injury), the Claimant presented to the doctor as scheduled, the examination was performed and Dr. C properly submitted the bill for services performed as a result of the examination.

10. In accordance with Texas Labor Code §408.0041(h)(1), Carrier shall pay for an examination required under §408.0041 (a) or (f).

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) Office.
3. The preponderance of the evidence is contrary to the decision of the MFDR Findings & Decision that Petitioner/Provider, Dr. JC, is not entitled to reimbursement in the amount of \$524.02 for the designated doctor's examination CPT code 99456-WP-W5 and additional testing for CPT code 95851 on (Date of Injury).

DECISION

The preponderance of the evidence is contrary to the decision of the MFDR Findings & Decision that Petitioner/Provider, Dr. JC, is not entitled to reimbursement in the amount of \$524.02 for the designated doctor's examination CPT code 99456-WP-W5 and additional testing for CPT code 95851 on (Date of Injury).

ORDER

Carrier is liable for the benefits at issue in this hearing.

The true corporate name of the Carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**SELF INSURED
STREET ADDRESS
(CITY), TEXAS (ZIP CODE)**

Signed this 7th day of December, 2011.

Carol A. Fougerat
Hearing Officer