

MEDICAL CONTESTED CASE HEARING NO. 14025

**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 October 17, 2013, to decide the following disputed issue:

1. Is (Healthcare Provider) entitled to a fee of \$612.00 for FCE testing on August 7, 2009?

**PARTIES PRESENT**

The petitioner/carrier (hereinafter "carrier") appeared and was represented by TR, attorney. The respondent/provider (hereinafter "provider") did not appear in person or by attorney, and also did not respond to a 10-day letter. The claimant's appearance was excused.

**EVIDENCE PRESENTED**

The following witnesses testified:

For the carrier:

1. None

For the provider:

1. None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2

The carrier's Exhibits P-2 through P-19 and P-21 through P-25

None for the provider

**BACKGROUND INFORMATION**

A representative for the carrier appeared at the hearing, but the provider did not appear. A letter dated October 17, 2013 was mailed to the provider on October 17, 2013, to its last known address, giving the provider until October 27, 2013 to appear and show cause why it failed to appear for the benefit contested case hearing. Since October 27, 2013 fell on a Sunday, the

provider had until October 28, 2013 to contact the Division. As of November 1, 2013 no response was received from the provider. The record was closed on November 1, 2013.

The bill the subject of this action that was submitted by the provider to the carrier was for four hours of FCE testing on the claimant on August 7, 2009.

HD, M.D., the owner of the provider has been indicted and convicted of fraudulent billing practices and ordered to pay restitution to the carrier. Part of the basis of that conviction was that the provider routinely billed the maximum permissible time for FCE's, four hours, even though the evidence adduced indicated that the typical FCE would take a fraction of that time.

The carrier provided the affidavit of KH, a Senior Investigator with carrier, which highlighted the exaggerated and unnecessary nature of the provider's billing practices and its failure to explain the actual duration of the FCE's. The carrier's evidence also indicated that the services billed by the provider did not conform to AMA CPT code 97750 for the service rendered, which specifically requires "direct one-on-one patient contact." The evidence indicated that the four hours for which FCE's were routinely billed by the provider failed to comply with that requirement.

The preponderance of the evidence is contrary to the MFDRFD that the provider is entitled to reimbursement in the total amount of \$612.00 for the FCE for date of service August 7, 2009 for the claimant's compensable injury of (Date of Injury). The amount of reimbursement to which the provider is entitled is reduced from \$612.00 to \$0.00.

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. Venue is proper in the (City) Field Office of the Workers' Compensation Division of the Texas Department of Insurance.
2. The provider provided FCE testing to (Injured Worker), the claimant, on August 7, 2009.
3. The FCE testing was provided to (Injured Worker), the claimant, by the provider in connection with the compensable injury sustained by the claimant.
4. On August 7, 2009, (Injured Worker)'s employer provided workers' compensation insurance with Texas Mutual Insurance Company, Carrier.
5. The provider failed to appear for the Contested Case Hearing set on October 17, 2013 and did not respond to the Division's letter offering it an opportunity to have the hearing rescheduled.

6. No evidence was received that showed that the provider had good cause for its failure to appear for the Contested Case Hearing.
7. The bill the subject of this action that was submitted by the provider to the carrier was for four hours of FCE testing on August 7, 2009.
8. The provider did not provide four hours of FCE testing to the claimant on August 7, 2009.
9. Since the provider did not appear, it is unknown how long the FCE testing actually lasted on August 7, 2009.
10. The Division sent a single document stating the true corporate name of the carrier and name and street address of the carrier's registered agent with the 10-day letter to the provider at the provider's address of record. That document was admitted into evidence as Hearing Officer Exhibit Number 2.

### **CONCLUSIONS OF LAW**

1. The Workers' Compensation Division of the Texas Department of Insurance has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. (Healthcare Provider) is not entitled to a fee of \$612.00 for FCE testing on August 7, 2009.

### **DECISION**

(Healthcare Provider) is not entitled to a fee of \$612.00 for FCE testing on August 7, 2009.

### **ORDER**

The relief requested by the carrier is granted.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723**

Signed this 1<sup>st</sup> day of November, 2013.

William M. Routon, II  
Hearing Officer