

DOCKET NO. 453-03-0895.M4
[MDR TRACKING NO. M4-02-1864-01]

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
Petitioner**

v.

**DAVID W. OSTERMAN, M.D.,
Respondents**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. PROCEDURAL HISTORY

Petitioner Liberty Mutual Fire Insurance Company (Carrier) appealed the Findings and Decision of the Texas Worker's Compensation Commission's (TWCC) Medical Review Division (MRD) ordering reimbursement to David W. Osterman, M.D. (Provider) for medical services provided to ____ (Claimant). This decision orders the Carrier to reimburse the Provider \$404.50 for a right shoulder claviclectomy provided under CPT Code 23120.

The Administrative Law Judge convened a hearing on December 10, 2002. The hearing was concluded and the record closed that date. The Carrier was represented by Shannon Butterworth, attorney. The Provider did not appear and was not represented at the hearing.¹

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this preceding is whether the Carrier should reimburse the Provider \$404.50 plus interest for a right shoulder claviclectomy billed under CPT Code 23120. The Provider billed \$809.00 for the procedure, but the Carrier reduced the amount by 50% per the Multiple Procedure Reimbursement Rule.²

¹ The Texas Workers' Compensation Commission was not a party to the dispute.

² Medical Fee Guideline Surgery Ground Rule I. D. 1. b. ii. provides that the Multiple Procedure Reimbursement Rule is 50% of the MAR for secondary or subsequent procedures when the secondary or subsequent procedures are not performed through the same incision but are related to the primary procedure.

The documentary record in this case consisted of the 23-page certified record of the MRD proceeding (Exh. 1). No oral testimony was taken.

Based on the evidence, the ALJ concludes that the Carrier's appeal should be denied. The particular facts, reasoning, and legal analysis in support of this decision are set forth below in the Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. On _____, _____ (Claimant) suffered a compensable injury to his right shoulder and left elbow.
2. Claimant's injury is covered by worker's compensation insurance written for Claimant's employer by Liberty Mutual Fire Insurance Company(Carrier).
3. David W. Osterman, M.D. (Provider) treated the Claimant's injury by performing three surgical procedures on March 5, 2001.
4. The treatment provided to the Claimant's left elbow is not in dispute.
5. The Provider treated the Claimant's shoulder injury with a right shoulder arthroscopy billed under CPT Code 23420 and a claviclectomy billed under CPT Code 23120.
6. The procedures referred to in Finding of Fact No. 5 were performed through separate incisions.
7. The Carrier did not present evidence to show that the claviclectomy was related to the right shoulder arthroscopy.
8. The Carrier reduced the reimbursement paid to the Provider by 50%.
9. The Provider timely requested dispute resolution by the Texas Workers' Compensation Commission Medical Review Division (MRD).
10. The MRD issued its findings and decision on September 10, 2002, concluding that the disputed expenses should be paid, and the Carrier timely appealed this decision.

IV. CONCLUSIONS OF LAW

11. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE §413.031.
12. The State Office of Administrative Hearings has jurisdiction over matters related to the

hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LABOR CODE §413.031 and TEX. GOV'T CODE ch. 2003.

13. The Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE §2001.052 in that it contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular section of the statutes and rules involved; and a short plain statement of the matters asserted.
14. The Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LABOR CODE §413.031.
15. Medical Fee Guideline Surgery Ground Rule I. D. 1. b. ii. provides for a 50% reduction of the MAR for a secondary or subsequent procedure when the secondary or subsequent procedure is related to the primary procedure.
16. Based on Finding of Fact No. 7 and Conclusions of Law Nos. 4 and 5, the Carrier failed to prove that reimbursement of the right shoulder claviclectomy billed under CPT Code 23120 should be reduced by 50%.
17. The Carrier should reimburse the Provider for providing treatment to Claimant in the amount of \$404.50 plus interest.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Fire Insurance Company reimburse David W. Osterman, M.D. for fees incurred in treating the Claimant in the amount of \$404.50.

ISSUED this 15th day of January 2003.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**