

**DOCKET NO. 453-03-2308.M5**  
**[MDR TRACKING NO. M5-03-0372-01]**

**CY-FAIR CHIROPRACTIC**  
**DR. A. KENT RICE, D.C.,**  
**Petitioner**

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**BEFORE THE STATE OFFICE**

**VS.**

**OF**

**SENTRY INSURANCE, A MUTUAL**  
**COMPANY,**  
**Respondent**

**ADMINISTRATIVE HEARINGS**

**ORDER CONFIRMING DENIAL OF MOTION FOR CONTINUANCE AND**  
**GRANTING MOTION FOR SUMMARY DISPOSITION**

On May 21, 2003, at 4:55 p.m., Petitioner, Cy-Fair Chiropractic, filed a motion for continuance. In support of its motion, Cy-Fair stated that a computer upgrade performed at its offices on May 13, 2003, resulted in five of its thirteen computers being only partially functional, interfering with its ability to retrieve medical information needed to accurately support its case at the hearing. Respondent, Sentry Insurance (Sentry), opposed the motion.

Because of the late filing of the motion despite the amount of advance warning Cy-Fair had to inform the Administrative Law Judge (ALJ) and Sentry of its computer problems, Cy-Fair's failure to notify Sentry of its intent to file the motion, and its failure to persuade the ALJ that computer problems effectively hindered its ability to submit medical documents that had previously been provided to the Independent Review Organization, the motion for continuance was denied.

Sentry then moved for summary disposition of the case pursuant to the rules of the State Office of Administrative Hearings (SOAH), at 1 TEX. ADMIN. CODE § 155.57. The basis of Sentry's motion was a ruling by the ALJ sustaining Sentry's objection to the admission of medical records filed by Cy-Fair the morning of the hearing, and Cy-Fair's decision not to offer any other evidence at the hearing.

Sentry argued that pursuant to a standing order issued by SOAH in workers' compensation cases,<sup>1</sup> Cy-Fair was required to file with SOAH copies of the documents it had submitted to the

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<sup>1</sup> The standing order, which was sent to the parties in this case, requires each party to file at SOAH a copy of all documents/materials the party submitted to the independent review organization; to file the documents no later than fourteen days before the SOAH hearing date shown on the notice of hearing; and to send a copy of all such documents to all parties at the time of the filing with SOAH.

Independent Review Organization in this dispute. Because SOAH did not receive the documents until the day of the hearing, Sentry argued, it violated the standing order and the documents should not be admitted into evidence. Cy-Fair conceded the filing was late but stated that the documents had previously been sent to SOAH but did not arrive. Consequently, according to Cy-Fair, it re-sent the documents via overnight delivery on Monday, May 19, 2003.

Based on the parties' arguments, the ALJ concluded Cy-Fair did not provide persuasive reasons for failing to meet the document filing deadline. Consequently, the late-filed medical documents were not admitted into the record.

Notwithstanding the ALJ's ruling rejecting the medical documents, Cy-Fair was asked whether it had any other evidence or witnesses it wished to present at the hearing. Cy-Fair responded that it had none. Based on the ALJ's ruling on the late-filed documents and Cy-Fair's failure to present witness testimony, Sentry moved for summary disposition. The ALJ granted the motion. In support of the ruling, the administrative law judge makes the following findings:

1. Notice of the hearing was sent to the parties on March 5, 2003. The notice informed the parties of the date, time, and location of the hearing, the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
2. The hearing was set for 11:00 a.m. on May 22, 2003.
3. In addition to the Notice of Hearing, the parties were sent a "Prehearing Order Requiring Filing of All Documents Provided to the Independent Review Organization" (the Order). The Order required that each party file at SOAH copies of the documents the party submitted to the IRO regarding the dispute.
4. The Order required that all documents referred to in Finding 3 be filed no later than 14 days before the SOAH hearing.
5. The Order informed the parties that failure to comply with its requirements might result in the denial of continuances, the inability of a party to introduce evidence into the record, or other sanctions.
6. On May 21, 2003, at 4:55 p.m., Cy-Fair filed a motion for continuance.
7. At the hearing, which was called to order on May 22, 2003, at 9:00 a.m., the ALJ denied the

motion for continuance.

8. Cy-Fair filed the documents described in Finding 3 on May 22, 2003, at 8:42 a.m.
9. Cy-Fair failed to demonstrate good cause for its failure to timely file the documents referred to in Finding 6.
10. The ALJ sustained an objection to the admission of Cy-Fair's documents into the record. The documents were not admitted into evidence.
11. Besides the documents referred to in Finding 6, Cy-Fair presented no evidence at the hearing.
12. At the hearing, the ALJ granted a Motion for Summary Disposition made by Sentry Insurance based on Cy-Fair's failure to present any evidence.

IT IS ORDERED that the motion of Sentry Insurance for summary disposition is granted, there is no issue as to any material fact, and Sentry Insurance is entitled to a decision in its favor as a matter of law. ACCORDINGLY, IT IS ORDERED that Cy-Fair Chiropractic is not entitled to any reimbursement in SOAH Docket No. 453-03-2308.M5.

**Signed this 11<sup>th</sup> day of June 2003.**

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**GARY W. ELKINS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**