

LONE STAR ORTHOPEDICS, <i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
VS.	§	OF
	§	
TRANSIT AUTHORITY OF HARRIS COUNTY, <i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

Lone Star Orthopedics (Lone Star) seeks reimbursement for the preparation of a medical report associated with an office visit. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC or Commission) found in favor of the Respondent, Transit Authority of Harris County, because the preparation of the report is not reimbursable. The ALJ finds that the MRD's decision is correct and determines that Lone Star is not entitled to reimbursement.

**I. Jurisdiction, Notice, and Procedural History**

The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031 and TEX. GOV'T CODE ANN. ch. 2003.

The MRD issued its decision on December 17, 2002. Lone Star filed a timely request for hearing. Proper and timely notice of the hearing was issued April 10, 2003. The hearing was convened May 13, 2003, with ALJ John H. Beeler presiding. Kenneth G. Berliner, M.D., appeared for Lone Star, and attorney Steven M. Tipton appeared for Respondent. The hearing was adjourned and the record closed the same day.

**II. Legal Standards**

Lone Star relied on 28 TEX. ADMIN. CODE §133.100, which provides:

(a) Medical reports shall be in a form and manner prescribed by the Commission. Additional information may be attached.

(b) A health care provider shall file required medical reports by facsimile or electronic transmission if the provider has been provided with a facsimile number or email address for the recipient, otherwise, the reports shall be sent by personal delivery or mail. A health care provider is not required to separately file reports which have previously been provided to the carrier without receiving compensation as provided in §133.106 of this title (relating to Fair and Reasonable Fees for Required Reports and Records).

Respondent relied on 28 TEX. ADMIN. CODE §133 (3) (E), which provides:

(3) Complete medical bill--A medical bill that:

E) includes the following legible supporting documentation, unless previously provided to the insurance carrier or its agents:

i) for the three highest level office visits, single and interdisciplinary programs such as work conditioning programs, work hardening programs, and physical medicine treatment(s) and/or services(s): a copy of progress notes and/or SOAP (subjective/objective assessment plan/procedure) notes, which shall substantiate the care given and the need for further treatment(s) and/or services(s), and indicate progress, improvement, the date of the next treatment(s) and/or service(s), complications, and expected release dates,

Respondent also relied on 28 TEX. ADMIN. CODE §133.106 which provides:

a) The doctor shall charge the carrier no more than the fair and reasonable fee as specified in subsection (f) of this section for the required medical reports listed in the preceding sections.

f) The following are the fees the commission considers fair and reasonable for each submitted required report or record under any section of this title:

(1) required reports on prescribed forms--\$15;

The decision of the MRD cited Medical Fee Guidelines Evaluation /Management Ground Rule (IV)(C)(3)(3)(ii) which provides:

Non-face-to-face time: Physicians also spend time working before or after the face-to-face time with the patient, performing such tasks as reviewing records and tests, arranging for further services, and communicating with other professionals and the patient through written reports and telephone contact. This non-face-to-face time for office services is not included in the time component described in the E/M codes. However, the non-face-to-face work associated with the encounter was included in calculating the total work of typical services in physician surveys. Therefore, the face-to-face time associated with the services described by any E/M code is a valid proxy for the total work done before, during, and after the visit.

The Petitioner, has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).

### **III. Discussion**

**Background.** Neither party offered evidence during the hearing, but presented argument. Lone Star argues that a bill for office visits was returned from Respondent without payment because the required written report of the visit is not legible. Lone Star is seeking reimbursement for the cost of dictating the report and having it transcribed. Lone Star billed \$50.00 for the preparation of the report and Respondent paid \$15.00. The MRD determined that the payment for the office visit itself included the payment for the report and that Respondent is entitled to a refund of \$15.00. Respondent did not ask for the refund at the hearing.

**Analysis and recommendation.** The Ground Rule set out above indicates that the preparation of the report is included in the payment for an office visit. Lone Star presented no authority for any other conclusion, therefore, reimbursement is not ordered. Neither party discussed the issue of the refund, so it is not addressed here.

### **IV. Findings of Fact**

1. \_\_\_ suffered a compensable injury.
2. Metropolitan Transit Authority of Harris County (Metropolitan) is the workers' compensation insurer with respect to the claims at issue in this case.
3. Lone Star Orthopedics (Lone Star) provided treatment to \_\_\_ on July 3, 2001.
4. Lone Star billed Metropolitan for the services provided to \_\_\_. The bill was returned unpaid because the attached report was not legible.
5. Lone Star resubmitted the bill and an additional bill for \$50.00 for the transcription cost incurred in preparing a legible report.
6. Metropolitan denied payment for the transcription cost.
7. The MRD denied payment for the transcription cost.
8. Lone Star filed a request for hearing.
9. Notice of the hearing was issued April 10, 2003.
10. The notice 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 sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. The hearing was convened May 13, 2003, with ALJ John H. Beeler presiding. Kenneth G. Berliner, M.D., appeared for Lone Star, and Steven M. Tipton appeared for Metropolitan. The hearing was adjourned and the record closed the same day.

## V. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
3. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. TEX. LAB. CODE § 408.021.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE §2001.052.
5. Lone Star has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
6. Based on Medical Fee Guidelines Evaluation /Management Ground Rule (IV)(C)(3)(3)(ii) Lone Star is not entitled to reimbursement for the preparation of the report.

### **ORDER**

**IT IS THEREFORE ORDERED** that Lone Star Orthopedics is not entitled to additional reimbursement from Metropolitan Transit Authority of Harris County for health care services provided to \_\_\_ on July 3, 2001.

**Signed this 14<sup>th</sup> of July, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**JOHN H. BEELER**  
**Administrative Law Judge**